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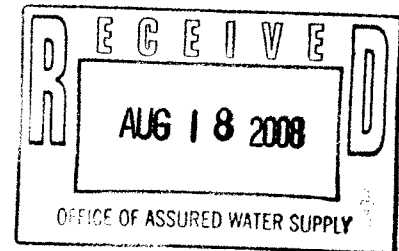
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August 15, 2008

VIA HAND DELIVERY

Mr. Doug Dunham
Deputy Assistant Director
Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, Arizona 85012



Re: Town Of Chino Valley's Comments Regarding The Arizona Department Of Water Resources' Draft Groundwater Transportation Rules Regulating The Withdrawal And Transportation Of Groundwater From The Big Chino Sub-Basin To The Prescott Active Management Area

Dear Doug:

At the outset, on behalf of the Town of Chino Valley (the "Town"), we would like to commend you and the Department for your draft Transportation of Groundwater to an Active Management Area rules dated June 18, 2008 (the "Draft Rules"). The Town believes that the Draft Rules are legally sound and consistent with the express language of the statute and the legislative intent. After analyzing the plain language of the statute, its legislative history, the remainder of the Groundwater Code, and applicable case law, we believe that, with respect to those rules promulgated pursuant to A.R.S. § 45-555, the Draft Rules are consistent with the underlying statutes and, therefore, are in accordance with the law.¹ Accordingly, with the exception of any technical amendments the Department determines might be necessary, it is the Town's position that the Draft Rules should not be modified prior to their publication in the Arizona Administrative Register as proposed rules.

I. Draft R12-15-1408 Properly Allows Affected Municipalities To Withdraw HIA Water From Anywhere On Their Historically Irrigated Acres.

By allowing eligible cities and towns to "withdraw the total amount of groundwater allowed under R12-15-1406 from any HIA owned or leased" in the Big Chino sub-basin by the municipality, the Department properly interpreted A.R.S. § 45-555. On its face, that statute

¹ The Town offers no specific comments regarding those portions of the Draft Rules promulgated pursuant to other sections of A.R.S. Title 45, Chapter 2, Article 8.1.

allows cities and towns in the Prescott AMA to withdraw all or any portion of their HIA water from any portion of their “historically irrigated acres,” thus allowing those entities to withdraw the water from a single well or multiple wells in a centralized location on their HIA lands and transport that water by a common pipeline to their respective municipal water systems. This interpretation is consistent with the plain language of the statute, the legislative history, and the intentions of the legislature.

A. The Plain Language Of Section 45-555 Supports The Department’s Interpretation That Affected Municipalities May Withdraw All Of Their HIA Water From A Single Well Or A Collection Of Wells In A Centralized Location.

In pertinent part, Section 45-555(A) provides as follows:

A city or town that owns land consisting of historically irrigated acres in the Big Chino sub-basin of the Verde River, . . . or a city or town with the consent of the landowner, may withdraw from the land for transportation to an adjacent initial active management area an amount of groundwater determined pursuant to this section.

Although the statute does not define the term “from the land,” a consideration of Section 45-555 in its entirety makes clear that it refers to the entire portfolio of HIA owned by the municipality, thus allowing the city or town to withdraw all of it HIA water from a single well or a collection of wells in a centralized location. (The relevant portions of Section 45-555 are attached as **Exhibit “A.”**)

The starting point of this analysis is the statute’s definition of the term “farm” contained in Subsection (D)(2) of Section 45-555, which provides that a “farm” is “an area of land in the sub-basin that is or was served by a common irrigation water distribution system.” Subsection (B) instructs ADWR to determine the annual transportation allotment by (i) determining “each farm or portion of a farm” owned or leased by the municipality, (ii) determining the HIA retired from irrigation, and then (iii) multiplying the “*sum of those historically irrigated acres*” by three acre-feet per acre. Reading the definition of “farm” together with Subsection (B) leads to the logical conclusion that the legislature intended that the term be used solely for the purpose of calculating the number of acres of land eligible for HIA status, and nothing more. A careful consideration of Subsections (B), (C), and (D) makes this clear.

In order to determine a city or town’s annual transportation allotment pursuant to Subsection (B)(1), ADWR must first determine the number of acres that were served by a common irrigation water distribution system (*i.e.*, the “farm”). This subsection’s focus on lands served by a common irrigation system is logical because only those acres that were historically *irrigated* are subject to the statutory right of withdrawal allowed under Section 45-555. In other words, the statute’s definition of the word “farm” effectively defines the number of acres that

ADWR may consider when making its HIA determination by examining the credible documentary evidence that is required under Subsection (C). Finally, once the required documentary analysis has been made, in accordance with Subsection (B)(2), ADWR is to multiply *the sum* of the HIA retired from irrigation by three acre-feet. This equation results in a single total quantity of water that may then be withdrawn by the municipality for importation into the Prescott AMA. Nothing about this equation suggests that this water must be separately withdrawn from individual wells located on numerous separate parcels of HIA acquired by the municipality. The statute's focus on the total number of HIA retired from irrigation again demonstrates that the legislature in no way intended to restrict a municipality from withdrawing from a particular parcel only that amount of HIA water associated with the historical irrigation of the farm previously located on that parcel. Rather, it exemplifies the legislature's intent that a city or town within the Prescott AMA has the right to withdraw all or any portion of the water associated with its historically irrigated acres from *any* of its HIA lands.

It is particularly instructive that the legislature limited the use of the term "farm" to Subsection (B), which, as discussed above, governs how the annual transportation allotment is to be calculated. The legislature did not use the term "farm" in Subsection (A), which is the portion of the statute that contains the "withdraw from the land" standard. A review of Section 45-555(A) reveals that it makes no reference to either the term "farm" or to a "common irrigation water distribution system." Instead, Subsection (A) only refers *in the aggregate* to all "historically irrigated acres in the Big Chino sub-basin" that are owned or controlled by a city or town.² This interpretation is the only one that gives full and reasonable meaning to all of Section 45-555 and considers each subsection in its proper context.

Because the Department's proposed approach to aggregate all of the retired HIA lands owned or leased by the municipality is entirely consistent with language and intent of the statute, it is not necessary to track which lands are associated with which farms. Doing so would be unnecessarily burdensome on the Department from an administrative standpoint and would provide no useful information. In essence, the Department would needlessly be keeping track of information that is neither required by the statute nor useful to the Department. Once the annual transportation allotment of each farm is calculated based on service by a common irrigation system, and the "sum of those historically irrigated acres" is multiplied by three acre-feet to determine an aggregate amount of HIA water that may be withdrawn by the municipality on an annual basis, the statutory purpose for the definition of the term "farm" has been fully satisfied and there is no need to take into account which lands were associated with which farms.

SRP has suggested that if aggregation were allowed, a city or town might pump all of its HIA water from a single well close to the headwaters of the Verde River and adversely affect the River. However, SRP's position is flawed for a number of reasons. First, Article 8.1 of the Groundwater Code, which provides rules for transportation of groundwater from certain

² Accordingly, SRP's assertions that the language in Section 45-555(A) is somehow linked to the calculation of each farm's or portion of a farm's allotment is not correct.

groundwater basins or sub-basins for transportation into an AMA, allows neighboring landowners to bring damage claims if they are harmed by the transportation of groundwater across basin boundaries. Specifically, A.R.S. § 45-551(C) entitles a landowner to pursue and prove a damage claim under A.R.S. § 45-545. Because the right to bring such damage claims is available to protect affected landowners, there is no need and no reason to artificially restrict the right to withdraw and transport groundwater specified in Section 45-555 based on mere speculation that the Department's correct interpretation of the statute could adversely impact the Verde.

Second, because HIA water must be transported to the Prescott AMA, the Department's Assured Water Supply rules are applicable to withdrawals of water from HIA lands. Therefore, persons proposing to withdraw groundwater from HIA lands for transportation to a municipality within the Prescott AMA must apply to the Department for a physical availability determination pursuant to A.A.C. R12-15-702. In order to obtain this determination, the applicant must demonstrate to the Department that, among other things, "[t]he volume of water that is physically available for 100 years in the area that is subject to the application, according to R12-15-716." A.A.C. R12-15-702(C)(1). To make this demonstration, the applicant must submit an approved hydrologic study that demonstrates the physical availability of the groundwater. *See* A.A.C. R12-15-716(B) and (D). Accordingly, the Department's Assured Water Supply rules afford added protection against decreases in the maximum 100-year depth-to-static water level. As a result, it is not necessary to go well beyond the intent of the legislature by restricting those cities and towns, which Section 45-555 was intended to benefit, from withdrawing all or any portion of their HIA water from any part of their HIA lands.

Finally, SRP's erroneous interpretation of the statute would likely lead to greater pumping near the headwaters of the Verde — not less. If required to withdraw HIA water from each individual farm, as SRP has proposed, the affected municipalities will be forced to construct wells on parcels they would have otherwise avoided, including those parcels located closest to the headwaters of the Verde River. There are at least four such parcels near the Verde headwaters. If SRP's interpretation were accepted, the municipality owning those parcels would be forced to drill at least one well on each of them in order to withdraw the HIA water associated with those parcels. On the other hand, under the Department's correct interpretation of the statute, those cities and towns would have the ability to withdraw the HIA water associated with those parcels from any point on their HIA lands (*e.g.*, from a centralized well field located far from the headwaters), thereby avoiding any potential for adverse impacts on the Verde River.

B. The Legislative History Of Section 45-555 Reveals That The Department's Interpretation Of Section 45-555(A) Is Entirely Correct.

A review of the legislative history of the original version of SB 1055, which was introduced on January 24, 1991, reveals that the bill would have established a detailed permit-based system for transportation of groundwater. *See Exhibit "B."* This permit system would have allowed *any* "person who owns land consisting of historically irrigated acres" in the Big

Chino sub-basin (and other “reserved groundwater basins”) to withdraw groundwater from the land and transport it to an active management area pursuant to a permit. *See Exhibit “B,”* at 32. Importantly, this original version of the bill included an express requirement that the applicant for a transportation permit identify “[t]he amount of historic use of groundwater and the *complete legal description of the land to which the transportation allotment is appurtenant.*” *See Exhibit “B,”* at 33 (emphasis added).³

Following extensive amendments in the House, the House Engrossed version (*i.e.*, the final version) of SB 1055 was revised in a number of significant ways. Most significant, however, is the fact that the provision requiring a permit applicant to specify the “legal description of the land to which the transportation allotment is appurtenant” was removed from the bill. *See Exhibit “C.”* The language of Section 45-555 contained in the House Engrossed version of the bill is identical to the current version of Section 45-555 in the Arizona Revised Statutes. This change is significant because the elimination of the express requirement that the transportation allotment be appurtenant to specific lands, and identified by a “complete legal description,” is clear evidence that the legislature did not intend to impose such a location-based restriction on groundwater pumping in the final bill. In fact, any interpretation of Section 45-555 to the contrary would be directly inconsistent with this legislative history.

C. Rules Of Statutory Construction Dictate That The Legislature Could Not Have Intended That Cities And Towns Drill A Well On Each Historically Irrigated Farm And Construct An Extensive Network Of Pipelines To Connect Those Wells.

A common rule of statutory construction is that when the legislature enacts a law, it does not intend an absurd result. *City of Phoenix v. Superior Court*, 677 P.2d 1283 (1984) (Supreme Court will interpret statute in such a way as to give it a fair and sensible meaning); *State v. Medrano-Barraza*, 949 P.2d 561 (App. 1997) (appellate courts presume framers of statute did not intend an absurd result and court’s construction must avoid such a consequence); *State v. Weible*, 688 P.2d 1005 (1984) (pragmatic construction of statute is required if technical construction would lead to absurdity); *State Bd. of Dispensing Opticians v. Schwab*, 380 P.2d 784 (1963) (where language of statute is susceptible of several interpretations, court will adopt that interpretation which is reasonable and avoids contradictions or absurdities); *State v. LeMatty*, 590 P.2d 449 (1979) (practical construction of statute is preferred to construction which is absurd, and practical construction is required if technical construction would lead to mischief or absurdity). SRP’s interpretation of Section 45-555’s “withdraw from the land” standard would force the absurd result of requiring enormous additional expenditures by municipalities (of many millions of dollars) to construct more wells and longer pipelines than would otherwise

³ This original version of SB 1055 also contained a definition of “farm” that is identical to the definition of “farm” contained in the current Subsection 45-555(D)(2). This definition was not mentioned in the appurtenancy requirement of proposed Subsection 45-552.01(B)(3), just as it is not mentioned in the current Subsection 45-555(A). This consistent treatment of the definition of “farm” indicates that it was not intended to impose a location restriction on where groundwater can be withdrawn pursuant to this statutory right.

be required, and all without any corresponding benefit. Such an interpretation of the statute would be tantamount to forcing a waste of public funds.

SRP's interpretation of "withdraw from the land" would effectively vitiate the legislature's intent in enacting Section 45-555 by making it financially impossible for municipalities in the Prescott AMA to transport water from historically irrigated acres they own or lease in the Big Chino sub-basin. Section 45-555 must be interpreted in light of the legislature's intent: to afford a source of water to cities and towns in the Prescott AMA to allow them to efficiently meet their municipal water needs. *See State v. Korzep*, 799 P.2d 831 (1990) (primary rule of statutory interpretation is to determine and give effect to legislative intent behind the statute); *Calmat of Arizona v. State ex rel. Miller*, 859 P.2d 1323 (1993) (when interpreting statute, which is silent on specific matter, court must look beyond statutory language and consider statute's effects and consequences, as well as its spirit and purpose); *Zamora v. Reinstein*, 915 P.2d 1227 (1996) (court interprets statutes in such a way as to achieve general legislative goals that can be adduced from body of legislation in question); *State v. Cornish*, 968 P.2d 606 (App. 1998) (in construing statutes, courts will apply constructions that make practical sense rather than hypertechnical constructions that frustrate legislative intent). However, SRP's erroneous interpretation of the statute requiring that HIA water be withdrawn from each individual farm (or portion of a farm), thereby forcing the drilling of a large number of wells and the construction of a complex network of pipelines, would render the very cities and towns for which the law was written unable to use the statutory rights granted under Section 45-555. This is the case because if SRP's interpretation of the statute were accepted, the affected municipalities would likely be financially unable to construct the necessary infrastructure to transport the physically and legally available water from their HIA lands to their municipal water systems. Because such a result is clearly contrary to the intent of the legislature, it must be rejected.

In previous comments to the Department, SRP has argued that Section 45-555 does not contain precisely the same language as that contained in A.R.S. § 45-552 (regarding the transportation of groundwater withdrawn from the McMullen Valley basin) to support its position that an entity eligible to transport groundwater pursuant to Section 45-555 may not aggregate its HIA water rights to withdraw HIA water from any HIA lands owned or leased by that entity. This argument is without basis for a number of reasons. First, as discussed in Section I.A., above, the plain language of A.R.S. § 45-555 supports the Department's interpretation that affected municipalities may withdraw all of their HIA water from a single well or a collection of wells in a centralized location. Therefore, there is no need to look outside of Section 45-555 because it adequately addresses the issue. However, assuming *arguendo* that it does not, all one need do is examine the legislative intent to conclude that the Department has correctly interpreted the statute. *See* Section I.B., above. Finally, because the language of Section 45-555 and its legislative history clearly do not support SRP's assertion that the legislature intended for the affected municipalities to withdraw their HIA water from each separate farm owned or leased, there is no need to look beyond the statute and its history and examine unrelated statutes that govern the withdrawal and transportation of groundwater from

different basins in an entirely different part of the state. An unrelated statute that has no relationship whatsoever to the transportation of water from HIA in the Big Chino sub-basin to the Prescott AMA should not be relied upon to lead to the illogical result suggested by SRP.

D. The Doctrine Of Reasonable Use Has No Bearing On This Issue And Does Not Require That Municipalities Withdraw HIA Groundwater Only From Wells Located On Individual Farms.

In previous comments to the Department, SRP cited to *Farmers Inv. Co. v. Bettwy*, 113 Ariz. 520, 558 P.2d 14 (1976), *Jarvis v. State Land Dep't*, 104 Ariz. 527, 456 P.2d 385 (1969), and *Bristor v. Cheatham*, 75 Ariz. 227, 255 P.2d 173 (1953), in support of its argument that the legislature intended that those cities and towns to which Section 45-555 is applicable be allowed to withdraw their HIA water only from approximately the same locations as had historically taken place. However, this argument relies on an outdated and unpersuasive interpretation of the common law doctrine of reasonable use and cases that interpreted the doctrine prior to enactment of the Groundwater Code. Therefore, the cases relied upon by SRP have absolutely no bearing on the Department's interpretation of the statute. The rights provided to cities and towns by Section 45-555 are *statutory* and therefore are not limited by the common law. Moreover, the original transportation provisions of the Groundwater Code (Article 8) were expressly intended to overturn the common law restrictions on transporting groundwater as interpreted by the court in the *Jarvis* and *FICO* cases.

In fact, even before the Groundwater Code was enacted in 1980, the legislature adopted interim statutory amendments in 1977 intended to overturn the transportation restrictions imposed by the *FICO* court. In its legislative findings and declaration of policy for the 1977 amendments to the Groundwater Act, the legislature specifically stated "that strict application of *existing law* preventing the transfer of groundwater jeopardizes the economy and well-being of the people of this state and prevents certain necessary distribution of Arizona's groundwater resources." In *Town of Chino Valley v. State Land Dep't*, the Arizona Supreme Court explained that the legislature's reference to "existing law" plainly meant the law as interpreted in *FICO*. See 119 Ariz. 243, 245, 580 P.2d 704, 706 (1978). Because it was the *FICO* decision that prompted the legislature to enact the 1977 amendments concerning transportation of groundwater, as well as the 1980 Groundwater Code, that case cannot be used as persuasive authority to interpret Section 45-555 — a statute that was enacted some 15 years after *FICO* was decided.

In *Town of Chino Valley v. City of Prescott*, 131 Ariz. 78, 638 P.2d 1324 (1981), the Arizona Supreme Court concluded the Groundwater Code was a constitutional exercise of the legislature's power to prospectively regulate groundwater rights and uses. In fact, in rejecting claims by opponents of the Code, the court held that "[t]he statements in *Bristor* and *Jarvis* do not mean that rights to the use of groundwaters cannot be *modified prospectively* by the Legislature. They only mean that courts will adhere to an announced rule to protect rights

acquired under it and that if any change in the law is necessary, it should be made by the Legislature.” *Id.*, 131 Ariz. at 81, 638 P.2d at 1327 (emphasis added).

This is precisely what the legislature did in 1977 when it precluded injunctive relief for the transfer of groundwater pursuant to a certificate of exemption; again in 1980 when it authorized the withdrawal and transportation of groundwater within sub-basins without payment of damages (*see* A.R.S. §§ 45-541, 45-542); and, most recently, in 1991, when it added Article 8.1 to the Groundwater Code. SRP’s reliance on cases decided before any of these legislative enactments can have no bearing on the statutory rights established under Section 45-555.

II. It Would Be Inappropriate And Premature To Require A Subflow Determination Prior To Authorizing The Transportation Of HIA Water Under Section 45-555.

SRP asserts that the HIA groundwater transportation rules should require that the Department determine that neither the water historically used to irrigate the farm nor the water to be transported to the Prescott AMA was appropriable subflow. The Town disagrees. The water to be transported from the Big Chino sub-basin to the Prescott AMA will be withdrawn from one or more wells, and it is settled law in Arizona that “[u]nderground waters are presumed to be percolating and, therefore, not appropriable as subflow.” *In re General Adjudication of All Rights to Use Water in Gila River System and Source (Gila IV)*, 198 Ariz. 330, 335, 9 P.3d 1069, 1074 (2000). This presumption may only be overcome by clear and convincing evidence. *Id.* Subflow determinations will be made in the Gila River Adjudication pursuant to the legislature’s statutory scheme for determining conflicting claims to appropriable water. *See* A.R.S. § 45-251 *et seq.* There is no basis for asserting that ADWR should be required to (or is even authorized to) make such determinations outside of the adjudication process (in which the Department has a clearly defined technical support role). Because this issue is to be resolved as part of the Gila River General Stream Adjudication, this rulemaking is not the proper forum in which to make such arguments.

III. The Department Should Rely On The Evidence In Its Records To Determine the HIA Status Of Those Lands Contained In Its Report Entitled *Identification Of Historically Irrigated Acres In The Big Chino Sub-Basin*.

The decision of the Governor’s Regulatory Review Council that the Department’s report entitled *Identification Of Historically Irrigated Acres In The Big Chino Sub-Basin* constitutes a rule did nothing to affect the validity of the evidence used to make the HIA determinations contained in that document. Because the Department based its previous HIA determinations on credible evidence, such as aerial photography, farm records, and affidavits, the Department should use that evidence as a basis when making any HIA determinations under the final HIA water transportation rules.

Section 45-555(C) provides that in determining whether acres of land qualify as HIA, “the director shall rely only on credible documentary evidence submitted by the city or town *or*



otherwise obtained by the department.” A.R.S. § 45-555(C) (emphasis added). Accordingly, the affected municipalities need not necessarily be the entities from which the Department obtains the information. Because the statute expressly provides that documentary evidence may be obtained by the Department from *any* source, it clearly contemplates that all of the evidence on which the Department relies to make its HIA determinations will not necessarily be provided by the affected municipalities. Therefore, the fact that draft R12-15-1404(A) contemplates that the Department may base its determination on information that may not be “known” by the “entity eligible to transport groundwater from the Big Chino sub-basin” is reasonable, appropriate, and consistent with the express language of the statute. *See* draft R12-15-1404(A)(7) and (8).

IV. Summary and Requested Action.

For all of the reasons described above, we believe that the Department’s interpretation of Section 45-555, as reflected in the Draft Rules, is both proper and sound. If ultimately adopted as final, the Department’s groundwater transportation rules will provide a practical means of administration, both for the Department and for those entities affected by the statute. The Department’s interpretation is entitled to substantial deference, and the Town respectfully urges the Department to reject any requests that would lead to a modification of the Draft Rules, which would lead to an absurd and economically wasteful result that is contrary to the plain language of the statute and the clear intent of the legislature. The Town appreciates your willingness to consider its comments.

Sincerely,

A handwritten signature in cursive script that reads "Michael T. Kafka".

Michael T. Kafka

cc. Mark Holmes

EXHIBIT "A"

45-555. Transportation of groundwater withdrawn in Big Chino sub-basin of the Verde River groundwater basin to initial active management area; exception; definitions

A. A city or town that owns land consisting of historically irrigated acres in the Big Chino sub-basin of the Verde River groundwater basin, as designated by order of the director dated June 21, 1984, or a city or town with the consent of the landowner, may withdraw from the land for transportation to an adjacent initial active management area an amount of groundwater determined pursuant to this section. The amount of groundwater that may be withdrawn from the land pursuant to this section shall not exceed:

1. In any year two times the annual transportation allotment for the land determined pursuant to subsection B of this section.

2. For any period of ten consecutive years computed in continuing progressive series beginning in the year transportation of groundwater from the land begins, ten times the annual transportation allotment for the land.

B. The director shall determine the annual transportation allotment as follows:

1. Determine each farm or portion of a farm owned or leased by the city or town in the sub-basin.

2. For each such farm or portion of a farm, determine the historically irrigated acres retired from irrigation. Multiply the sum of those historically irrigated acres by three acre-feet per acre.

C. In making the determination required by subsection B of this section, the director shall rely only on credible documentary evidence submitted by the city or town or otherwise obtained by the department.

D. For purposes of this section:

1. "Documentary evidence" means correspondence, contracts, other agreements, aerial photography, affidavits, receipts or official records.

2. "Farm" means an area of land in the sub-basin that is or was served by a common irrigation water distribution system.

3. "Historically irrigated acres" means acres of land overlying an aquifer that were irrigated with groundwater at any time between January 1, 1975 and January 1, 1990.

EXHIBIT "B"

STATE OF ARIZONA
40th LEGISLATURE
1st Regular Session

REFERENCE TITLE: groundwater
transportation act

SENATE

SB 1055

Introduced

January 24, 1991

Referred on January 28, 1991

Rules

Natural Resources and Agriculture

Introduced by

Senators Arzberger, Stephens, Rios, Henderson; Representatives McLendon, Guenther, Hartdegen, Wettaw, Nagel; Senators Buster, Day, Dougherty, Gutierrez, Hardt, Hill, Representatives Bee, Brown, Cajero, Celaya, Evans, Hamilton, Jackson, Jewett, Ortega, Palmer, Pickens, Raymond, Rosenbaum, Williams

AN ACT

REPEALING SECTION 9-404, ARIZONA REVISED STATUTES; AMENDING TITLE 9, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3; AMENDING TITLE 11, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-606; AMENDING SECTION 15-971, ARIZONA REVISED STATUTES; AMENDING TITLE 35, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.4; AMENDING TITLE 42, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-257; AMENDING SECTION 42-301, ARIZONA REVISED STATUTES; AMENDING SECTION 42-1341, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1990, CHAPTER 332, SECTION 1 AND CHAPTER 391, SECTION 2; REPEALING SECTION 42-1341, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1990, THIRD SPECIAL SESSION, CHAPTER 9, SECTION 30; AMENDING TITLE 42, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-1342.01; AMENDING SECTIONS 45-420, 45-437, 45-453, 45-454, 45-463, 45-469, 45-470, 45-472, 45-473, 45-474, 45-492, 45-496, 45-542, 45-543 AND 45-544, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-546; AMENDING TITLE 45, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8.1; AMENDING SECTION 45-604, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-605; AMENDING SECTIONS 45-632, 48-3713.01 AND 48-3713.02, ARIZONA REVISED STATUTES; BLENDING MULTIPLE ENACTMENTS; RELATING TO GROUNDWATER.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Declaration of policy

A. In addition to the legislative findings and policies set forth in section 45-401, Arizona Revised Statutes, the legislature finds that using land in areas outside initial active management areas with a management goal of safe-yield and withdrawing and transporting groundwater to those active management areas is an issue of statewide concern that



B. Groundwater which is withdrawn by a city or town within its service area may be transported pursuant to a delivery contract authorized by section 45-492, subsection C between sub-basins of an active management area and shall be subject to payment of damages unless the groundwater is withdrawn pursuant to a type 1 non-irrigation grandfathered right.

Sec. 26. Section 45-544, Arizona Revised Statutes, is amended to read:

45-544. Transportation in areas not subject to active management; damages

EXCEPT AS PROVIDED IN ARTICLE 8.1 OF THIS CHAPTER, in areas outside of active management areas, groundwater may be transported:

1. Within a sub-basin of a groundwater basin or within a groundwater basin, if there are no sub-basins, without payment of damages.

2. Between sub-basins of a groundwater basin or away from a groundwater basin, subject to payment of damages.

Sec. 27. Title 45, chapter 2, article 8, Arizona Revised Statutes, is amended by adding section 45-546, to read:

45-546. Weed and dust control

A PERSON SHALL MAINTAIN PROPERTY THAT IS OWNED OR CONTROLLED BY THE PERSON AND FROM WHICH GROUNDWATER IS OR WILL BE TRANSPORTED PURSUANT TO THIS ARTICLE FREE OF NOXIOUS WEEDS AS DEFINED IN SECTION 3-201, RUSSIAN THISTLES (SALSOLA KALI) AND BLOWING DUST THAT CREATES A THREAT TO HEALTH OR SAFETY.

Sec. 28. Title 45, chapter 2, Arizona Revised Statutes, is amended by adding article 8.1, to read:

ARTICLE 8.1. RESERVED AND CLOSED GROUNDWATER BASINS

45-551. Scope of article

A. EXCEPT AS PROVIDED IN SECTION 45-551.02, THIS ARTICLE APPLIES ONLY TO WITHDRAWALS OF GROUNDWATER FOR TRANSPORTATION TO INITIAL AND SUBSEQUENT ACTIVE MANAGEMENT AREAS.

B. A PERSON WHO HAS BEEN ISSUED A PERMIT UNDER SECTION 45-552.01 MAY WITHDRAW GROUNDWATER FROM A LOCATION WITHIN A RESERVED GROUNDWATER BASIN OR SUB-BASIN ESTABLISHED BY SECTION 45-551.01 AND TRANSPORT THE GROUNDWATER, SUBJECT TO PAYMENT OF DAMAGES PURSUANT TO SECTION 45-545, TO AN INITIAL ACTIVE MANAGEMENT AREA ONLY PURSUANT TO THIS ARTICLE.

C. A PERSON WHO HAS BEEN ISSUED A CERTIFICATE OF GRANDFATHERED TRANSPORTATION UNDER SECTION 45-552.02 MAY TRANSPORT GROUNDWATER WITHDRAWN IN A CLOSED GROUNDWATER BASIN OR SUB-BASIN TO AN INITIAL ACTIVE MANAGEMENT AREA, SUBJECT TO PAYMENT OF DAMAGES PURSUANT TO SECTION 45-545, ONLY PURSUANT TO SECTIONS 45-551.02 AND 45-552.02.

D. A PERSON WHO HAS BEEN ISSUED A CERTIFICATE OF GRANDFATHERED TRANSPORTATION UNDER SECTION 45-552.02 MAY TRANSPORT GROUNDWATER AWAY FROM THE LITTLE COLORADO RIVER PLATEAU GROUNDWATER BASIN OR THE PARKER GROUNDWATER BASIN, SUBJECT TO PAYMENT OF DAMAGES PURSUANT TO SECTION 45-545, ONLY PURSUANT TO SECTIONS 45-551.02 AND 45-552.02.

45-551.01. Designation of reserved groundwater basins;
restrictions

A. THE FOLLOWING GROUNDWATER BASINS AND SUB-BASINS, THE BOUNDARIES OF WHICH WERE DESIGNATED BY ORDER OF THE DIRECTOR DATED JUNE 21, 1984, ARE ESTABLISHED AS RESERVED GROUNDWATER BASINS AND SUB-BASINS:

1. THE BIG CHINO SUB-BASIN OF THE VERDE RIVER GROUNDWATER BASIN.
2. THE BUTLER VALLEY GROUNDWATER BASIN.
3. THE HARQUAHALA GROUNDWATER BASIN.
4. THE MC MULLEN VALLEY GROUNDWATER BASIN.

B. A PERSON WHO HAS BEEN ISSUED A PERMIT UNDER SECTION 45-552.01 MAY TRANSPORT GROUNDWATER WITHDRAWN IN A RESERVED GROUNDWATER BASIN OR SUB-BASIN TO AN INITIAL ACTIVE MANAGEMENT AREA, EXCEPT THAT:

1. GROUNDWATER WITHDRAWN IN THE BIG CHINO SUB-BASIN OF THE VERDE RIVER GROUNDWATER BASIN MAY BE TRANSPORTED ONLY TO AN ADJACENT INITIAL ACTIVE MANAGEMENT AREA.

2. GROUNDWATER WITHDRAWN IN THE MC MULLEN VALLEY GROUNDWATER BASIN MAY BE TRANSPORTED ONLY TO AN ADJACENT INITIAL ACTIVE MANAGEMENT AREA AND MAY BE USED ONLY BY A CITY OR TOWN THAT ACQUIRED RIGHTS TO GROUNDWATER THAT IS APPURTENANT TO LAND THAT THE CITY OR TOWN PURCHASED IN THE BASIN BEFORE JANUARY 1, 1987. THE TOTAL AMOUNT OF GROUNDWATER THAT MAY BE TRANSPORTED FROM THE MC MULLEN VALLEY GROUNDWATER BASIN SHALL NOT EXCEED FOUR MILLION ACRE-FEET.

C. IN AN INITIAL ACTIVE MANAGEMENT AREA, FOR PURPOSES OF DETERMINING, PURSUANT TO SECTION 45-576, WHETHER TO ISSUE A CERTIFICATE OF ASSURED WATER SUPPLY OR TO DESIGNATE THE SERVICE AREA OF A CITY, TOWN OR PRIVATE WATER COMPANY AS A SERVICE AREA WHERE AN ASSURED WATER SUPPLY EXISTS BASED IN WHOLE OR IN PART ON GROUNDWATER WITHDRAWN IN A RESERVED GROUNDWATER BASIN OR SUB-BASIN, THE DIRECTOR SHALL CONSIDER ONLY FORTY PER CENT OF THE GROUNDWATER THAT CAN BE WITHDRAWN IN THE RESERVED GROUNDWATER BASIN OR SUB-BASIN FROM A DEPTH TO ONE THOUSAND TWO HUNDRED FEET AT THE SITE OR SITES OF THE PROPOSED WITHDRAWALS AT A RATE THAT, WHEN ADDED TO THE EXISTING RATES OF WITHDRAWALS IN THE AREA, IS NOT EXPECTED TO CAUSE THE GROUNDWATER TABLE AT THE SITE OR SITES TO DECLINE MORE THAN AN AVERAGE OF FIVE FEET PER YEAR DURING THE ONE HUNDRED YEAR EVALUATION PERIOD LESS THE SUM OF THE FOLLOWING AMOUNTS OF GROUNDWATER IN THE RESERVED GROUNDWATER BASIN OR SUB-BASIN:

1. THE TOTAL AMOUNT ON WHICH THE DIRECTOR HAS ALREADY BASED CERTIFICATES OR DESIGNATIONS OF ASSURED WATER SUPPLY IN AN INITIAL ACTIVE MANAGEMENT AREA.

2. THE TOTAL AMOUNT TRANSPORTED TO AN INITIAL ACTIVE MANAGEMENT AREA FOR OTHER PURPOSES.

D. THE DIRECTOR SHALL MONITOR WITHDRAWALS FROM THE RESERVED GROUNDWATER BASIN OR SUB-BASIN FOR TRANSPORTATION TO AN INITIAL ACTIVE MANAGEMENT AREA. THE DIRECTOR SHALL CLOSE THE RESERVED GROUNDWATER BASIN OR SUB-BASIN TO NEW DETERMINATIONS OF AN ASSURED WATER SUPPLY IN INITIAL ACTIVE MANAGEMENT AREAS PURSUANT TO SECTION 45-576 BASED IN WHOLE OR IN PART ON GROUNDWATER IN THE RESERVED GROUNDWATER BASIN OR SUB-BASIN AND TO FURTHER TRANSPORTATIONS TO AN INITIAL ACTIVE MANAGEMENT AREA FOR OTHER PURPOSES WHEN THE TOTAL AMOUNT OF GROUNDWATER IN THE RESERVED GROUNDWATER

1 BASIN OR SUB-BASIN FOR WHICH THE DIRECTOR HAS MADE A DETERMINATION IN AN
 2 INITIAL ACTIVE MANAGEMENT AREA OF AN ASSURED WATER SUPPLY AND THE AMOUNT
 3 TRANSPORTED TO AN INITIAL ACTIVE MANAGEMENT AREA FOR OTHER PURPOSES EQUALS
 4 THE TOTAL AMOUNT OF GROUNDWATER THAT MAY BE TRANSPORTED TO AN INITIAL
 5 ACTIVE MANAGEMENT AREA UNDER SUBSECTION C OF THIS SECTION.

6 45-551.02. Closed groundwater basins; prohibition;
 7 exceptions; definitions

8 A. ALL GROUNDWATER BASINS OR SUB-BASINS, THE BOUNDARIES OF WHICH
 9 WERE DESIGNATED BY ORDER OF THE DIRECTOR DATED JUNE 21, 1984, THAT ARE NOT
 10 ESTABLISHED AS RESERVED GROUNDWATER BASINS OR SUB-BASINS UNDER SECTION
 11 45-551.01 ARE ESTABLISHED AS CLOSED GROUNDWATER BASINS OR SUB-BASINS.

12 B. GROUNDWATER WITHDRAWN IN A CLOSED GROUNDWATER BASIN OR SUB-BASIN
 13 MAY NOT BE TRANSPORTED DIRECTLY OR INDIRECTLY TO AN INITIAL ACTIVE
 14 MANAGEMENT AREA, EXCEPT THAT A PERSON WHO AT ANY TIME DURING THE TWELVE
 15 MONTHS BEFORE THE EFFECTIVE DATE OF THIS SECTION WAS TRANSPORTING TO AN
 16 INITIAL ACTIVE MANAGEMENT AREA GROUNDWATER THAT WAS LEGALLY WITHDRAWN FROM
 17 A WELL IN A CLOSED GROUNDWATER BASIN OR SUB-BASIN HAS THE RIGHT TO
 18 TRANSPORT GROUNDWATER THAT IS LEGALLY WITHDRAWN FROM THE WELL OR A
 19 REPLACEMENT WELL IN APPROXIMATELY THE SAME LOCATION TO THE INITIAL ACTIVE
 20 MANAGEMENT AREA IN AN ANNUAL AMOUNT EQUAL TO THE MAXIMUM AMOUNT OF
 21 GROUNDWATER THAT WAS WITHDRAWN FROM THE WELL AND TRANSPORTED BY THE PERSON
 22 TO THE INITIAL ACTIVE MANAGEMENT AREA IN ANY ONE OF THE FIVE CALENDAR
 23 YEARS IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF THIS SECTION.

24 C. IN ADDITION TO THE LIMITATIONS PRESCRIBED BY SUBSECTION B OF
 25 THIS SECTION, GROUNDWATER WITHDRAWN IN THE LITTLE COLORADO RIVER PLATEAU
 26 GROUNDWATER BASIN OR THE PARKER GROUNDWATER BASIN MAY NOT BE TRANSPORTED
 27 AWAY FROM THE BASIN, EXCEPT THAT A PERSON WHO AT ANY TIME DURING THE
 28 TWELVE MONTHS BEFORE THE EFFECTIVE DATE OF THIS SECTION WAS TRANSPORTING
 29 AWAY FROM THE BASIN GROUNDWATER THAT WAS LEGALLY WITHDRAWN FROM A WELL IN
 30 EITHER GROUNDWATER BASIN HAS THE RIGHT, SUBJECT TO SUBSECTION E OF THIS
 31 SECTION, TO TRANSPORT GROUNDWATER THAT IS LEGALLY WITHDRAWN FROM THE WELL
 32 OR A REPLACEMENT WELL IN APPROXIMATELY THE SAME LOCATION TO ANOTHER
 33 GROUNDWATER BASIN IN AN ANNUAL AMOUNT EQUAL TO THE GREATER OF THE MAXIMUM
 34 AMOUNT OF GROUNDWATER EITHER:

35 1. THAT WAS WITHDRAWN FROM THE WELL AND TRANSPORTED BY THE PERSON
 36 AWAY FROM THE GROUNDWATER BASIN IN ANY ONE OF THE FIVE CALENDAR YEARS
 37 IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF THIS SECTION.

38 2. THAT COULD HAVE BEEN WITHDRAWN FROM THE WELL DURING THE TWELVE
 39 MONTH PERIOD, TAKING INTO ACCOUNT THE PUMP CAPACITY AND SPECIFIC CAPACITY
 40 OF THE WELL DURING THAT PERIOD, OR TWENTY-FIVE ACRE-Feet, WHICHEVER IS
 41 LESS.

42 D. NOTWITHSTANDING SUBSECTION C OF THIS SECTION AND SUBJECT TO
 43 SUBSECTIONS E AND F OF THIS SECTION:

44 1. A PERSON MAY TRANSPORT GROUNDWATER BY MOTOR VEHICLE FROM THE
 45 LITTLE COLORADO RIVER PLATEAU GROUNDWATER BASIN OR THE PARKER GROUNDWATER
 46 BASIN TO AN ADJACENT GROUNDWATER BASIN FOR DOMESTIC PURPOSES OR STOCK
 47 WATERING.

48 2. A CITY OR TOWN WHOSE SERVICE AREA IS LOCATED EITHER IN THE
 49 LITTLE COLORADO RIVER PLATEAU GROUNDWATER BASIN AND AN ADJACENT

GROUNDWATER BASIN OR IN THE PARKER GROUNDWATER BASIN AND AN ADJACENT GROUNDWATER BASIN MAY TRANSPORT GROUNDWATER THAT IS WITHDRAWN WITHIN THAT PORTION OF ITS SERVICE AREA LOCATED IN THE LITTLE COLORADO RIVER PLATEAU GROUNDWATER BASIN OR THE PARKER GROUNDWATER BASIN TO THE ADJACENT GROUNDWATER BASIN FOR THE BENEFIT OF LANDOWNERS AND RESIDENTS WITHIN ITS SERVICE AREA.

E. THE DIRECTOR MAY LIMIT BY ORDER THE AMOUNT OF GROUNDWATER WITHDRAWN FROM A WELL IN THE LITTLE COLORADO RIVER PLATEAU GROUNDWATER BASIN FOR TRANSPORTATION AWAY FROM THE BASIN PURSUANT TO SUBSECTION C OR D OF THIS SECTION IN ANY YEAR IN WHICH THE DIRECTOR DETERMINES THAT THE PROJECTED WITHDRAWALS FROM THE WELL FOR THAT PURPOSE WILL UNREASONABLY INCREASE DAMAGE TO SURROUNDING LAND OR OTHER WATER USERS AND IF THE WELL:

1. WAS DRILLED ON OR BEFORE THE EFFECTIVE DATE OF THIS SECTION.
2. WAS NOT COMPLETED ON THE EFFECTIVE DATE OF THIS SECTION, BUT A NOTICE OF INTENTION TO DRILL THE WELL WAS ON FILE ON THAT DATE.
3. IS A REPLACEMENT WELL, IN APPROXIMATELY THE SAME LOCATION, FOR A WELL DESCRIBED IN PARAGRAPH 1 OR 2 OF THIS SUBSECTION.

F. GROUNDWATER MAY BE WITHDRAWN FROM A WELL DRILLED IN THE LITTLE COLORADO RIVER PLATEAU GROUNDWATER BASIN AFTER THE EFFECTIVE DATE OF THIS SECTION, EXCEPT A REPLACEMENT WELL IN APPROXIMATELY THE SAME LOCATION OR A WELL DRILLED AFTER THAT DATE PURSUANT TO A NOTICE OF INTENTION TO DRILL THAT WAS ON FILE WITH THE DEPARTMENT ON THAT DATE, FOR TRANSPORTATION AWAY FROM THE BASIN PURSUANT TO SUBSECTION C OR D OF THIS SECTION ONLY IF THE LOCATION OF THE WELL COMPLIES WITH THE RULES ADOPTED PURSUANT TO SECTION 45-598, SUBSECTION A TO PREVENT UNREASONABLY INCREASING DAMAGE TO SURROUNDING LAND OR OTHER WATER USERS FROM THE CONCENTRATION OF WELLS.

G. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, GROUNDWATER THAT IS WITHDRAWN IN A CLOSED GROUNDWATER BASIN OR SUB-BASIN MAY NOT BE EXCHANGED FOR OTHER WATER THAT IS TRANSPORTED DIRECTLY OR INDIRECTLY TO AN INITIAL ACTIVE MANAGEMENT AREA, EXCEPT THAT GROUNDWATER WITHDRAWN IN THE HUALAPAI VALLEY GROUNDWATER BASIN MAY BE EXCHANGED FOR OTHER WATER THAT A CITY OR TOWN IN THE SAME GROUNDWATER BASIN OR AN ADJACENT GROUNDWATER BASIN HAS A RIGHT TO USE AND THAT IS TRANSPORTED DIRECTLY OR INDIRECTLY TO AN INITIAL ACTIVE MANAGEMENT AREA.

H. FOR PURPOSES OF THIS SECTION:

1. "DOMESTIC PURPOSES" MEANS USES RELATED TO THE SUPPLY, SERVICE AND ACTIVITIES OF HOUSEHOLDS AND PRIVATE RESIDENCES AND INCLUDES THE APPLICATION OF WATER TO LESS THAN TWO ACRES OF LAND TO PRODUCE PLANTS OR PARTS OF PLANTS FOR SALE OR HUMAN CONSUMPTION, OR FOR USE AS FEED FOR LIVESTOCK, RANGE LIVESTOCK OR POULTRY, AS SUCH TERMS ARE DEFINED IN SECTION 3-1201.

2. "STOCK WATERING" MEANS THE WATERING OF LIVESTOCK, RANGE LIVESTOCK OR POULTRY, AS SUCH TERMS ARE DEFINED IN SECTION 3-1201.

45-552. Reserved groundwater basins; transportation allotments; limitations; definitions

A. A PERSON WHO OWNS LAND CONSISTING OF HISTORICALLY IRRIGATED ACRES IN A RESERVED GROUNDWATER BASIN OR SUB-BASIN, OR ANOTHER PERSON WITH THE CONSENT OF THE LANDOWNER, MAY WITHDRAW FROM THE LAND FOR TRANSPORTATION TO AN INITIAL ACTIVE MANAGEMENT AREA AN AMOUNT OF

GROUNDWATER DETERMINED PURSUANT TO THIS SECTION IF THE LANDOWNER HAS A PERMIT ISSUED UNDER SECTION 45-552.01. THE AMOUNT OF GROUNDWATER THAT MAY BE WITHDRAWN FROM THE LAND PURSUANT TO THIS SECTION SHALL NOT EXCEED:

1. IN ANY YEAR TWO TIMES THE ANNUAL TRANSPORTATION ALLOTMENT FOR THE LAND DETERMINED PURSUANT TO SUBSECTION B OF THIS SECTION.

2. FOR ANY PERIOD OF TEN CONSECUTIVE YEARS COMPUTED IN CONTINUING PROGRESSIVE SERIES BEGINNING IN THE YEAR TRANSPORTATION OF GROUNDWATER FROM THE LAND BEGINS, TEN TIMES THE ANNUAL TRANSPORTATION ALLOTMENT FOR THE LAND.

B. THE DIRECTOR SHALL DETERMINE THE ANNUAL TRANSPORTATION ALLOTMENT FOR LAND OWNED OR CONTROLLED BY A PERSON IN A RESERVED GROUNDWATER BASIN OR SUB-BASIN AS FOLLOWS:

1. DETERMINE EACH FARM OR PORTION OF A FARM OWNED OR CONTROLLED BY THE PERSON IN THE RESERVED GROUNDWATER BASIN OR SUB-BASIN.

2. FOR EACH FARM OR PORTION OF A FARM OWNED OR CONTROLLED BY THE PERSON IN THE RESERVED GROUNDWATER BASIN OR SUB-BASIN, DETERMINE THE HISTORICALLY IRRIGATED ACRES RETIRED FROM IRRIGATION: MULTIPLY THE SUM OF THOSE HISTORICALLY IRRIGATED ACRES BY THREE ACRE-FEET PER ACRE.

C. IN MAKING THE DETERMINATION REQUIRED BY SUBSECTION B OF THIS SECTION, THE DIRECTOR SHALL:

1. DETERMINE HISTORICALLY IRRIGATED ACRES IN THE MANNER IN WHICH THE DIRECTOR DETERMINED IRRIGATION ACRES FOR THE INITIAL ACTIVE MANAGEMENT AREAS AS PRESCRIBED BY CHAPTER IV OF THE MANAGEMENT PLANS FOR THE FIRST MANAGEMENT PERIOD.

2. RELY ONLY ON CREDIBLE DOCUMENTARY EVIDENCE SUBMITTED BY THE PERSON OR OTHERWISE OBTAINED BY THE DEPARTMENT.

D. FOR PURPOSES OF THIS SECTION:

1. "DOCUMENTARY EVIDENCE" MEANS CORRESPONDENCE, CONTRACTS, OTHER AGREEMENTS, AERIAL PHOTOGRAPHY, AFFIDAVITS, RECEIPTS OR OFFICIAL RECORDS.

2. "FARM" MEANS AN AREA OF LAND WITHIN A RESERVED GROUNDWATER BASIN OR SUB-BASIN THAT IS OR WAS SERVED BY A COMMON IRRIGATION WATER DISTRIBUTION SYSTEM.

3. "HISTORICALLY IRRIGATED ACRES" MEANS ACRES OF LAND OVERLYING AN AQUIFER THAT WERE IRRIGATED WITH GROUNDWATER AT ANY TIME BETWEEN JANUARY 1, 1975 AND JANUARY 1, 1990.

45-552.01. Permit; application; hydrological study; fee

A. A PERSON MAY TRANSPORT GROUNDWATER WITHDRAWN IN A RESERVED GROUNDWATER BASIN OR SUB-BASIN TO AN INITIAL ACTIVE MANAGEMENT AREA ONLY IF THE PERSON POSSESSES A VALID PERMIT ISSUED BY THE DIRECTOR FOR THE TRANSPORTATION.

B. THE PERSON SHALL APPLY FOR THE PERMIT ON A FORM PRESCRIBED AND FURNISHED BY THE DIRECTOR ON WHICH THE APPLICANT MUST DECLARE AND CERTIFY THE FOLLOWING INFORMATION:

1. THE NAME AND ADDRESS OF THE APPLICANT.

2. THE GROUNDWATER BASIN OR SUB-BASIN AND SOURCE OF THE GROUNDWATER TO BE TRANSPORTED.

3. THE AMOUNT OF HISTORIC USE OF GROUNDWATER AND THE COMPLETE LEGAL DESCRIPTION OF THE LAND TO WHICH THE TRANSPORTATION ALLOTMENT IS APPURTENANT.

1 4. THE LOCATION, NATURE AND AMOUNT OF THE PROPOSED USE AND GENERAL
2 LOCATION OF USE.

3 5. THE LOCATION, POINT OF WITHDRAWAL AND DESCRIPTION OF THE
4 PROPOSED WORKS BY WHICH THE WATER IS TO BE TRANSPORTED.

5 6. THE TIME WITHIN WHICH IT IS PROPOSED TO BEGIN CONSTRUCTION OF
6 THOSE WORKS AND THE TIME REQUIRED TO COMPLETE THE CONSTRUCTION AND THE
7 APPLICATION OF THE WATER TO THE PROPOSED USE.

8 7. THE NAME AND ADDRESS OF THE PERSON TO CONTACT REGARDING
9 INFORMATION CONTAINED ON THE APPLICATION.

10 8. THE MAXIMUM QUANTITY OF WATER PROPOSED TO BE TRANSPORTED EACH
11 YEAR.

12 9. THE PROPOSED USE OF THE WATER.

13 10. ANY OTHER INFORMATION THAT THE DIRECTOR MAY REQUIRE, INCLUDING
14 INFORMATION REGARDING THE PROPOSED USE OF THE WATER.

15 C. IN ADDITION TO THE INFORMATION REQUIRED ON THE APPLICATION UNDER
16 SUBSECTION B OF THIS SECTION, THE APPLICANT SHALL CONDUCT AND SUBMIT A
17 HYDROLOGICAL STUDY OF THE GROUNDWATER RESOURCES IN THE PORTION OF THE
18 RESERVED GROUNDWATER BASIN OR SUB-BASIN IN WHICH THE LAND FROM WHICH
19 GROUNDWATER WILL BE WITHDRAWN IS LOCATED. THE STUDY SHALL INCLUDE:

20 1. A LEGAL DESCRIPTION OF THE LAND OWNED OR CONTROLLED BY THE
21 PERSON WITHIN THE RESERVED GROUNDWATER BASIN OR SUB-BASIN FROM WHICH
22 GROUNDWATER WILL BE WITHDRAWN AND A MAP SHOWING THE LOCATION OF THE LAND.

23 2. AN ESTIMATE OF THE AMOUNT OF GROUNDWATER IN STORAGE IN THE
24 PORTION OF THE RESERVED GROUNDWATER BASIN OR SUB-BASIN IN WHICH THE LAND
25 FROM WHICH GROUNDWATER WILL BE WITHDRAWN IS LOCATED.

26 3. A LIST OF THE WELLS REGISTERED UNDER SECTION 45-593 AND LOCATED
27 IN EACH SUB-BASIN OF THE RESERVED GROUNDWATER BASIN IN WHICH THE PERSON
28 OWNS OR CONTROLS LAND OR, IF THERE ARE NO SUB-BASINS, A LIST OF THE WELLS
29 REGISTERED UNDER SECTION 45-593 AND LOCATED IN THE RESERVED GROUNDWATER
30 BASIN.

31 4. A MAP SHOWING THE DEPTH TO GROUNDWATER IN THE PORTION OF THE
32 RESERVED GROUNDWATER BASIN OR SUB-BASIN IN WHICH THE LAND FROM WHICH
33 GROUNDWATER WILL BE WITHDRAWN IS LOCATED.

34 5. FOR EACH WELL REGISTERED UNDER SECTION 45-593 AND LOCATED IN THE
35 PORTION OF THE RESERVED GROUNDWATER BASIN OR SUB-BASIN IN WHICH THE LAND
36 FROM WHICH GROUNDWATER WILL BE WITHDRAWN IS LOCATED, THE DEPTH TO WATER IF
37 THE OWNER OF THE WELL CONSENTS TO THE MEASUREMENT.

38 D. EACH APPLICATION SHALL BE ACCOMPANIED BY A FEE SUFFICIENT TO
39 COVER ALL COSTS ASSOCIATED WITH PROCESSING, NOTICING AND HEARING THE
40 APPLICATION AS FIXED BY RULES ADOPTED BY THE DIRECTOR.

41 E. THE APPLICANT SHALL SIGN THE APPLICATION THAT SHALL INCLUDE A
42 SWORN STATEMENT OR CERTIFICATION, UNDER PENALTY OF PERJURY, THAT THE
43 INFORMATION IN THE APPLICATION IS TRUE TO THE BEST KNOWLEDGE AND BELIEF OF
44 THE PERSON SIGNING THE APPLICATION.

45 45-552.02. Certificate of grandfathered transportation

46 A. A PERSON WHO CLAIMS THE RIGHT TO TRANSPORT GROUNDWATER PURSUANT
47 TO SECTION 45-551.02, SUBSECTION B OR C SHALL FILE AN APPLICATION FOR A
48 CERTIFICATE OF GRANDFATHERED TRANSPORTATION WITH THE DIRECTOR NO LATER
49 THAN DECEMBER 31, 1992 ON A FORM PRESCRIBED AND FURNISHED BY THE DIRECTOR.

1 B. THE APPLICATION FOR A CERTIFICATE OF GRANDFATHERED
2 TRANSPORTATION SHALL BE ON A FORM PRESCRIBED AND FURNISHED BY THE DIRECTOR
3 THAT REQUIRES SUFFICIENT INFORMATION NECESSARY FOR THE DIRECTOR TO
4 DETERMINE WHETHER THE APPLICANT QUALIFIES FOR A CERTIFICATE OF
5 GRANDFATHERED TRANSPORTATION UNDER THE REQUIREMENTS OF THIS ARTICLE AND
6 THE AMOUNT OF GROUNDWATER THE APPLICANT MAY TRANSPORT UNDER SECTION
7 45-551.02

8 C. THE APPLICANT SHALL SIGN THE APPLICATION THAT SHALL INCLUDE A
9 SWORN STATEMENT OR CERTIFICATION, UNDER PENALTY OF PERJURY, THAT THE
10 INFORMATION IN THE APPLICATION IS TRUE TO THE BEST KNOWLEDGE AND BELIEF OF
11 THE PERSON SIGNING THE APPLICATION.

12 D. A PERSON WHO CLAIMS THE RIGHT TO TRANSPORT GROUNDWATER PURSUANT
13 TO SECTION 45-551.02, SUBSECTION C OR D BUT WHO FAILS TO FILE AN
14 APPLICATION FOR A CERTIFICATE OF GRANDFATHERED TRANSPORTATION AS PROVIDED
15 IN THIS SECTION IS DEEMED TO WAIVE AND RELINQUISH ANY RIGHT TO TRANSPORT
16 GROUNDWATER PURSUANT TO SECTION 45-551.02, SUBSECTION C OR D.

17 45-553. Notice of application; objections; groundwater
18 transportation hearing board; hearing; approval
19 or denial; appeal

20 A. ON RECEIPT OF AN APPLICATION PURSUANT TO SECTION 45-552.01 OR
21 45-552.02, THE DIRECTOR SHALL ENDORSE ON THE APPLICATION THE DATE OF ITS
22 RECEIPT AND KEEP A RECORD OF THE APPLICATION. THE DIRECTOR SHALL CONDUCT
23 AN INITIAL REVIEW OF THE APPLICATION WITHIN FIFTEEN DAYS AFTER RECEIVING
24 THE APPLICATION. IF THE DIRECTOR DETERMINES IN THE INITIAL REVIEW THAT
25 THE APPLICATION IS INCOMPLETE, THE DIRECTOR SHALL NOTIFY THE APPLICANT.
26 THE APPLICATION IS INCOMPLETE UNTIL THE APPLICANT FILES THE INFORMATION
27 REQUESTED IN THE APPLICATION. THE DIRECTOR SHALL DETERMINE WHETHER THE
28 APPLICATION IS CORRECT WITHIN NINETY DAYS AFTER RECEIVING A COMPLETE
29 APPLICATION. THE DIRECTOR MAY REQUEST ADDITIONAL INFORMATION FROM THE
30 APPLICANT. THE DIRECTOR MAY CONDUCT INDEPENDENT INVESTIGATIONS AS MAY BE
31 NECESSARY TO DETERMINE WHETHER THE APPLICATION SHOULD BE APPROVED OR
32 DENIED.

33 B. IF THE APPLICATION IS DETERMINED TO BE COMPLETE AND CORRECT, THE
34 DIRECTOR, WITHIN FIFTEEN DAYS AFTER SUCH DETERMINATION OR A LONGER PERIOD
35 IF REQUESTED BY THE APPLICANT, SHALL GIVE NOTICE OF THE APPLICATION AND OF
36 THE HEARING ON THE APPLICATION ONCE EACH WEEK FOR TWO CONSECUTIVE WEEKS IN
37 A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY OR COUNTIES IN WHICH THE
38 GROUNDWATER BASIN OR SUB-BASIN IS LOCATED. THE DIRECTOR SHALL ALSO GIVE
39 NOTICE BY FIRST CLASS MAIL TO THE COUNTY OR COUNTIES AND TO EACH CITY,
40 TOWN, PRIVATE WATER COMPANY AND IRRIGATION DISTRICT IN THE COUNTY. THE
41 NOTICE SHALL STATE THAT WRITTEN OBJECTIONS MAY BE FILED WITH THE DIRECTOR
42 FOR FIFTEEN DAYS AFTER THE LAST PUBLICATION OF NOTICE. AN OBJECTION SHALL
43 STATE THE NAME AND MAILING ADDRESS OF THE OBJECTOR, SHALL BE SIGNED BY THE
44 OBJECTOR OR THE OBJECTOR'S AGENT OR ATTORNEY AND SHALL CLEARLY STATE THE
45 REASONS WHY THE PERMIT OR CERTIFICATE SHOULD NOT BE ISSUED.

46 C. THE DIRECTOR SHALL HOLD A HEARING ON THE APPLICATION AT LEAST
47 SIXTY DAYS BUT NOT MORE THAN NINETY DAYS AFTER THE LAST PUBLICATION OF
48 NOTICE. THE HEARING SHALL BE HELD IN THE COUNTY SEAT OF THE MOST POPULOUS

1 COUNTY IN WHICH THE GROUNDWATER BASIN OR SUB-BASIN IS LOCATED BEFORE A
2 HEARING BOARD COMPOSED AS FOLLOWS:
3 1. THE DIRECTOR, WHO SHALL SERVE AS CHAIRMAN AND SHALL VOTE ONLY IN
4 THE EVENT OF A TIE.
5 2. THE CHAIRMAN OR CHAIRMEN OF THE BOARD OF SUPERVISORS OF EACH
6 COUNTY IN WHICH THE GROUNDWATER BASIN OR SUB-BASIN IS LOCATED, OR A
7 DESIGNEE OR DESIGNEES.
8 3. TWO MEMBERS APPOINTED BY THE GOVERNOR, ONE OF WHOM MUST RESIDE
9 IN THE GROUNDWATER BASIN OR SUB-BASIN, AS FOLLOWS:
10 (a) ONE MEMBER APPOINTED ON THE BASIS OF KNOWLEDGE OF, INTEREST IN
11 AND EXPERIENCE WITH DEVELOPMENT, USE AND CONSERVATION OF WATER FROM A LIST
12 OF NOMINEES SUBMITTED BY PUBLIC INTEREST AND ENVIRONMENTAL GROUPS IN THIS
13 STATE.
14 (b) ONE MEMBER APPOINTED FROM THE GENERAL PUBLIC ON THE BASIS OF
15 KNOWLEDGE OF, INTEREST IN AND EXPERIENCE WITH DEVELOPMENT, USE AND
16 CONSERVATION OF WATER.
17 4. A HYDROLOGIST FROM THE DEPARTMENT APPOINTED BY THE DIRECTOR BUT
18 WITHOUT THE RIGHT TO VOTE.
19 D. THE PURPOSE OF THE HEARING SHALL BE TO RECEIVE EVIDENCE
20 REGARDING WHETHER THE APPLICANT HAS SATISFIED THE CONDITIONS OF A PERMIT
21 OR CERTIFICATE. IF THE APPLICANT HAS MET THE REQUIREMENTS OF THIS ARTICLE
22 AND SATISFIES THE FOLLOWING CONDITIONS, THE BOARD SHALL APPROVE THE
23 APPLICATION:
24 1. THE APPLICANT IS COMPLYING WITH ALL CONSERVATION REQUIREMENTS
25 IMPOSED PURSUANT TO THIS CHAPTER.
26 2. THE APPLICANT HAS DONE ALL THINGS REASONABLY POSSIBLE TO FULLY
27 USE AVAILABLE WATER SUPPLIES IN THE ACTIVE MANAGEMENT AREA, INCLUDING
28 CENTRAL ARIZONA PROJECT WATER.
29 3. IF THE APPLICANT IS A CITY, TOWN OR PRIVATE WATER COMPANY, THE
30 APPLICANT HAS ADOPTED A LONG-TERM WATER USE PLAN THAT INCORPORATES AT
31 LEAST THE FOLLOWING ELEMENTS:
32 (a) AN ASSESSMENT OF EXISTING WATER DEMANDS.
33 (b) AN ASSESSMENT OF EXISTING WATER SUPPLIES.
34 (c) A PROJECTION OF FUTURE WATER DEMANDS.
35 (d) A PROJECTION OF FUTURE WATER SUPPLIES.
36 (e) A PROGRAM TO RECLAIM AND REUSE EFFLUENT.
37 (f) A DESCRIPTION OF EXISTING AND FUTURE CONSERVATION PROGRAMS AND
38 AN IMPLEMENTATION SCHEDULE. THE CONSERVATION PROGRAMS SHALL BE CONSISTENT
39 WITH THE APPLICABLE CONSERVATION REQUIREMENTS PRESCRIBED BY THE CURRENT
40 MANAGEMENT PLAN FOR THE INITIAL ACTIVE MANAGEMENT AREA.
41 (g) A WATER SUPPLY AUGMENTATION PROGRAM.
42 4. THE APPLICANT HAS FULLY ASSESSED AND PROPOSES TO DO ALL THINGS
43 REASONABLY NECESSARY TO MITIGATE ECONOMIC AND ENVIRONMENTAL IMPACTS ON THE
44 COUNTY OR COUNTIES AND GROUNDWATER BASIN OR SUB-BASIN.
45 5. THE APPLICANT HAS DEMONSTRATED THAT THE APPLICANT MUST TRANSPORT
46 THE GROUNDWATER TO MEET THE REQUIREMENTS OF LAW.
47 E. THE BOARD SHALL MAKE ITS RECOMMENDATION TO THE DIRECTOR WITHIN
48 NINETY DAYS AFTER THE HEARING, AND THE DIRECTOR SHALL APPROVE OR DENY THE

1 APPLICATION AS RECOMMENDED BY THE BOARD. ON MAKING ITS RECOMMENDATIONS,
2 THE BOARD IS DISSOLVED AND TERMINATED FOR ALL PURPOSES.

3 F. IF THE PERMIT OR CERTIFICATE OF GRANDFATHERED TRANSPORTATION:

4 1. IS APPROVED:

5 (a) THE PERMIT OR CERTIFICATE IS VALID FOR RENEWABLE TEN YEAR
6 TERMS.

7 (b) THE PERMIT OR CERTIFICATE SHALL STATE THE MAXIMUM QUANTITY OF
8 GROUNDWATER THAT MAY BE TRANSPORTED DURING THE TERM OF VALIDITY.

9 2. IS DENIED, THE DIRECTOR SHALL RETURN A COPY OF THE APPLICATION
10 TO THE APPLICANT SPECIFICALLY STATING THE REASONS FOR DENIAL.

11 G. THE APPLICANT OR ANY PERSON ENTERING A PROPER OBJECTION TO THE
12 APPLICATION MAY APPEAL THE DECISION TO SUPERIOR COURT PURSUANT TO SECTION
13 45-405.

14 45-553.01. Groundwater transportation registry

15 A. THE DIRECTOR SHALL ESTABLISH AND MAINTAIN A REGISTRY OF ALL:

16 1. APPLICATIONS FOR PERMITS AND CERTIFICATES OF GRANDFATHERED
17 TRANSPORTATION RECEIVED UNDER THIS ARTICLE.

18 2. TRANSPORTATION ALLOTMENTS DETERMINED UNDER SECTION 45-552.

19 3. HYDROLOGICAL STUDIES SUBMITTED UNDER SECTION 45-552.01,
20 SUBSECTION C.

21 4. PERMITS AND CERTIFICATES OF GRANDFATHERED TRANSPORTATION ISSUED
22 UNDER THIS ARTICLE.

23 B. A PERSON TO WHOM A PERMIT OR CERTIFICATE IS ISSUED SHALL NOTIFY
24 THE DIRECTOR OF A CHANGE IN NAME OR MAILING ADDRESS, A CHANGE IN POINT OF
25 WITHDRAWAL OR A CONVEYANCE OF A PERMIT OR CERTIFICATE UNDER THIS ARTICLE.
26 A PERSON TO WHOM A PERMIT OR CERTIFICATE IS CONVEYED SHALL NOTIFY THE
27 DIRECTOR OF THE CONVEYANCE AND SHALL FURNISH INFORMATION AS REQUIRED BY
28 THE DIRECTOR TO KEEP THE REGISTRY CURRENT AND ACCURATE. THE DIRECTOR
29 SHALL HAVE CONTINUING JURISDICTION AND SHALL ISSUE REVISED PERMITS AND
30 CERTIFICATES AS NECESSARY.

31 45-553.02. Fees

32 A. A PERSON TO WHOM A CERTIFICATE OF ASSURED WATER SUPPLY IS ISSUED
33 PURSUANT TO SECTION 45-578 FOR LAND IN AN INITIAL ACTIVE MANAGEMENT AREA,
34 OR A CITY, TOWN OR PRIVATE WATER COMPANY IN AN INITIAL ACTIVE MANAGEMENT
35 AREA WHOSE SERVICE AREA IS DESIGNATED OR REDESIGNATED AS A SERVICE AREA
36 WHERE AN ASSURED WATER SUPPLY EXISTS PURSUANT TO SECTION 45-576, BASED ON
37 GROUNDWATER THAT IS BEING OR WILL BE WITHDRAWN FROM LAND IN A RESERVED
38 GROUNDWATER BASIN OR SUB-BASIN OR IN THE PINAL ACTIVE MANAGEMENT AREA, AND
39 TRANSPORTED AWAY FROM THE COUNTY IN WHICH THE LAND FROM WHICH THE
40 GROUNDWATER IS BEING OR WILL BE WITHDRAWN IS LOCATED SHALL PAY A ONE-TIME
41 INITIATION FEE TO THE COUNTY IN WHICH THE LAND IS LOCATED WITHIN NINETY
42 DAYS AFTER THE TRANSPORTATION AWAY FROM THE COUNTY BEGINS. THE FEE IS
43 TWENTY DOLLARS FOR EACH ACRE OF LAND WITH GRANDFATHERED RIGHTS, OR WITH AN
44 ANNUAL TRANSPORTATION ALLOTMENT UNDER SECTION 45-552, USED BY THE DIRECTOR
45 IN DETERMINING THAT AN ASSURED WATER SUPPLY EXISTS.

46 B. A PERSON WHO TRANSPORTS GROUNDWATER, WITHDRAWN IN A RESERVED
47 GROUNDWATER BASIN OR SUB-BASIN OR IN THE PINAL ACTIVE MANAGEMENT AREA,
48 AWAY FROM THE COUNTY IN WHICH IT WAS WITHDRAWN TO AN INITIAL ACTIVE
49 MANAGEMENT AREA SHALL PAY ANNUALLY TO THE COUNTY A GROUNDWATER

TRANSPORTATION FEE OF FIFTEEN DOLLARS FOR EACH ACRE-FOOT OF GROUNDWATER TRANSPORTED AWAY FROM THE COUNTY.

C. THE DIRECTOR SHALL ANNUALLY ADJUST THE DOLLAR AMOUNT OF THE FEES PRESCRIBED BY THIS SECTION ACCORDING TO THE ANNUAL CHANGES IN ACTUAL CENTRAL ARIZONA PROJECT COSTS ASSOCIATED WITH THE OPERATION AND MAINTENANCE OF PROJECT WORKS THAT ARE ASSESSED TO CENTRAL ARIZONA PROJECT SUBCONTRACTORS UNDER THE CENTRAL ARIZONA PROJECT WATER DELIVERY AND PAYMENT CONTRACT AND SUBCONTRACTS, USING THE 1993 CALENDAR YEAR OR THE CALENDAR YEAR IN WHICH THE UNITED STATES SECRETARY OF THE INTERIOR ISSUES NOTICE OF COMPLETION OF THE PROJECT, WHICHEVER YEAR OCCURS FIRST, AS THE BASE YEAR. THE DIRECTOR SHALL IMMEDIATELY NOTIFY ALL CONCERNED PARTIES OF THE FEE ADJUSTMENTS UNDER THIS SUBSECTION.

D. THE BOARD OF SUPERVISORS OF A COUNTY TO WHICH FEES ARE DUE AND PAYABLE UNDER THIS SECTION MAY REQUEST THE COUNTY ATTORNEY TO COMMENCE AND PROSECUTE ANY ACTION OR PROCEEDING TO ENFORCE THE COLLECTION OF THE FEES.

45-554. Requirements for transporting groundwater to an initial active management area; exception

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION:

1. THE DIRECTOR SHALL NOT CONSIDER GROUNDWATER THAT IS BEING OR WILL BE WITHDRAWN IN A RESERVED GROUNDWATER BASIN OR SUB-BASIN OR THE PINAL ACTIVE MANAGEMENT AREA AND TRANSPORTED TO AN INITIAL ACTIVE MANAGEMENT AREA FOR PURPOSES OF DETERMINING OR PROVIDING AN ASSURED WATER SUPPLY PURSUANT TO SECTION 45-576 IF THE GROUNDWATER IS BEING OR WILL BE USED BY A CITY, TOWN OR PRIVATE WATER COMPANY THAT WAS OFFERED BUT DID NOT SIGN A CENTRAL ARIZONA PROJECT WATER DELIVERY SUBCONTRACT.

2. A CITY, TOWN OR PRIVATE WATER COMPANY THAT HAS SIGNED A CENTRAL ARIZONA PROJECT WATER DELIVERY SUBCONTRACT MAY NOT USE GROUNDWATER WITHDRAWN IN A RESERVED GROUNDWATER BASIN OR SUB-BASIN OR THE PINAL ACTIVE MANAGEMENT AREA AND TRANSPORTED TO AN INITIAL ACTIVE MANAGEMENT AREA UNTIL IT HAS BOTH:

(a) DEMONSTRATED THAT IT HAS THE PHYSICAL CAPACITY, INCLUDING THE WATER TREATMENT PLANT AND DELIVERY SYSTEM, TO ACCEPT DELIVERY OF NINETY-FIVE PER CENT OF ITS CENTRAL ARIZONA PROJECT WATER ENTITLEMENT UNDER ITS CENTRAL ARIZONA PROJECT WATER DELIVERY SUBCONTRACT.

(b) ACCEPTED DELIVERY OF OR EXCHANGED EIGHTY PER CENT OR MORE OF THE CENTRAL ARIZONA PROJECT WATER AVAILABLE TO IT UNDER ITS CENTRAL ARIZONA PROJECT WATER DELIVERY SUBCONTRACT IN AT LEAST ONE OF THE THREE YEARS IMMEDIATELY PRECEDING THE YEAR IT INTENDS TO BEGIN USING GROUNDWATER TRANSPORTED AWAY FROM A RESERVED GROUNDWATER BASIN OR SUB-BASIN OR THE PINAL ACTIVE MANAGEMENT AREA.

B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO GROUNDWATER WITHDRAWN IN THE BIG CHINO SUB-BASIN OF THE VERDE RIVER GROUNDWATER BASIN AND TRANSPORTED TO AN ADJOINING INITIAL ACTIVE MANAGEMENT AREA.

45-555. Weeds and dust

A PERSON SHALL MAINTAIN PROPERTY OWNED OR CONTROLLED BY THE PERSON AND FROM WHICH GROUNDWATER IS OR WILL BE TRANSPORTED PURSUANT TO THIS ARTICLE FREE OF NOXIOUS WEEDS AS DEFINED IN SECTION 3-201, RUSSIAN THISTLES (SALSOLA KALI) AND BLOWING DUST THAT CREATES A THREAT TO HEALTH OR SAFETY.

45-556. Exemption for central Arizona project exchanges
and Indian water rights settlements

EXCEPT AS PROVIDED IN SECTION 45-551.01, SUBSECTION D, THIS ARTICLE DOES NOT APPLY TO THE WITHDRAWAL AND TRANSPORTATION OF FOURTEEN THOUSAND ACRE-FEET PER YEAR OF GROUNDWATER BY THE CITY OF PRESCOTT, OR THE UNITED STATES IN COOPERATION WITH THE CITY OF PRESCOTT, FROM THE BIG CHINO SUB-BASIN OF THE VERDE RIVER GROUNDWATER BASIN IF THE GROUNDWATER IS WITHDRAWN AND TRANSPORTED IN EXCHANGE FOR OR REPLACEMENT OF SUPPLIES OF WATER FROM THE CENTRAL ARIZONA PROJECT ALLOCATED TO INDIAN TRIBES, CITIES OR TOWNS IN THE PRESCOTT ACTIVE MANAGEMENT AREA OR IN THE VERDE RIVER GROUNDWATER BASIN, OR FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY FACILITATING THE SETTLEMENT OF THE WATER RIGHTS CLAIMS OF INDIAN TRIBES.

Sec. 29. Section 45-604, Arizona Revised Statutes, is amended to read:

45-604. Water measuring devices

A. Except as provided in subsections B and C, a person who withdraws groundwater from a nonexempt well in an active management area or an irrigation non-expansion area, OR WHO WITHDRAWS GROUNDWATER IN A RESERVED GROUNDWATER BASIN OR SUB-BASIN FOR TRANSPORTATION TO AN INITIAL ACTIVE MANAGEMENT AREA, shall use a water measuring device approved by the director.

B. A person who holds a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit in the amount of ten or fewer acre-feet per year is not required to use a water measuring device to measure withdrawals pursuant to that grandfathered right or groundwater withdrawal permit unless the person holds more than one such right or permit in the aggregate amount of more than ten acre-feet per year and withdraws more than ten acre-feet of groundwater per year pursuant to those rights or permits from one well.

C. In A RESERVED GROUNDWATER BASIN OR SUB-BASIN OR an irrigation non-expansion area, a person who withdraws ten or fewer acre feet of groundwater per year from a non-exempt well for a non-irrigation use is not required to use a water measuring device to measure withdrawals from that well.

D. The director shall adopt rules and regulations setting forth the requirements and specifications for water measuring devices.

Sec. 30. Title 45, chapter 2, article 10, Arizona Revised Statutes, is amended by adding section 45-605, to read:

45-605. New wells in reserved groundwater basins and
sub-basins; spacing requirements

IN A RESERVED GROUNDWATER BASIN OR SUB-BASIN DESIGNATED BY SECTION 45-551.01, A PERSON MAY NOT CONSTRUCT A NEW WELL FOR PURPOSES OF WITHDRAWING GROUNDWATER FOR TRANSPORTATION TO ANOTHER GROUNDWATER BASIN OR SUB-BASIN OR TO AN ACTIVE MANAGEMENT AREA IF THE DIRECTOR FINDS, AFTER REVIEWING THE APPLICATION FILED BY THE PERSON WISHING TO CONSTRUCT THE NEW WELL, THAT THE NEW WELL WILL UNREASONABLY INCREASE DAMAGE TO OTHER WELL OWNERS FROM THE CONCENTRATION OF WELLS. IN MAKING THIS DETERMINATION, THE DIRECTOR SHALL FOLLOW THE RULES ADOPTED PURSUANT TO SECTION 45-598, SUBSECTION A.

EXHIBIT "C"

House Engrossed Senate Bill

State of Arizona
Senate
Fortieth Legislature
First Regular Session
1991

SENATE BILL 1055

AN ACT

REPEALING SECTION 9-404, ARIZONA REVISED STATUTES; AMENDING TITLE 9, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3; AMENDING TITLE 11, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-606; AMENDING SECTION 15-971, ARIZONA REVISED STATUTES; AMENDING TITLE 35, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 3.4; AMENDING TITLE 42, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-257; AMENDING SECTION 42-301, ARIZONA REVISED STATUTES; AMENDING SECTION 42-1341, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1990, CHAPTER 332, SECTION 1 AND CHAPTER 391, SECTION 2; REPEALING SECTION 42-1341, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1990, THIRD SPECIAL SESSION, CHAPTER 9, SECTION 30; AMENDING TITLE 42, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-1342.01; AMENDING SECTIONS 45-420, 45-437, 45-453, 45-454, 45-463, 45-469, 45-470, 45-472, 45-473, 45-474, 45-492, 45-496, 45-542, 45-543 AND 45-544, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-546; AMENDING TITLE 45, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8.1; AMENDING TITLE 45, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 14; AMENDING TITLE 45, CHAPTER 2, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-605; AMENDING SECTIONS 45-604, 45-632, 48-3713.01 AND 48-3713.02, ARIZONA REVISED STATUTES; PROVIDING A CONDITIONAL ENACTMENT; RELATING TO WITHDRAWAL AND TRANSPORTATION OF GROUNDWATER.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Declaration of policy

A. In addition to the legislative findings and policies set forth in section 45-401, Arizona Revised Statutes, the legislature finds that using land in areas outside initial active management areas with a management goal of safe-yield and withdrawing and transporting groundwater to those active management areas is an issue of statewide concern that requires regulation by this state, notwithstanding any provision of state law.

B. The legislature also finds that owning and using land by cities and towns in counties other than the county in which the city or town is located from which water is or may be withdrawn or diverted and

1 THISTLES (SALSOLA KALI) AND BLOWING DUST THAT CREATES A THREAT TO HEALTH
2 OR SAFETY.

3 Sec. 28. Title 45, chapter 2, Arizona Revised Statutes, is amended
4 by adding article 8.1, to read:

5 ARTICLE 8.1. WITHDRAWALS OF GROUNDWATER FOR TRANSPORTATION
6 TO ACTIVE MANAGEMENT AREA

7 45-551. Application of article; limitation on
8 transportation to active management areas;
9 definition

10 A. THIS ARTICLE APPLIES ONLY TO WITHDRAWALS OF GROUNDWATER FOR
11 TRANSPORTATION TO ACTIVE MANAGEMENT AREAS.

12 B. UNLESS SPECIFICALLY AUTHORIZED BY THIS CHAPTER, GROUNDWATER THAT
13 IS WITHDRAWN IN A GROUNDWATER BASIN OR SUB-BASIN OUTSIDE OF AN INITIAL
14 ACTIVE MANAGEMENT AREA MAY NOT BE TRANSPORTED DIRECTLY OR INDIRECTLY TO AN
15 INITIAL ACTIVE MANAGEMENT AREA.

16 C. ANY TRANSPORTATION OF GROUNDWATER THAT IS AUTHORIZED BY THIS
17 ARTICLE IS SUBJECT TO PAYMENT OF DAMAGES PURSUANT TO SECTION 45-545.

18 D. FOR PURPOSES OF THIS ARTICLE, "TRANSPORTED INDIRECTLY" MEANS
19 THROUGH EXCHANGE, INDIRECT RECHARGE OR ANY OTHER METHOD OF PROVIDING WATER
20 THROUGH RECIPROCATION.

21 45-552. Transportation to an active management area from
22 land purchased by city before 1988

23 A. A CITY THAT PURCHASED LAND BEFORE JANUARY 1, 1988 IN A
24 GROUNDWATER BASIN LOCATED OUTSIDE OF AN INITIAL ACTIVE MANAGEMENT AREA
25 MAY, EITHER DIRECTLY OR IN EXCHANGE FOR CENTRAL ARIZONA PROJECT WATER
26 ALLOCATED FOR AGRICULTURAL PURPOSES, TRANSPORT GROUNDWATER FROM THAT LAND
27 TO AN ADJACENT ACTIVE MANAGEMENT AREA FOR USE BY ANY CITY, TOWN OR PRIVATE
28 WATER COMPANY, AND A GROUNDWATER REPLENISHMENT DISTRICT ESTABLISHED UNDER
29 TITLE 48, CHAPTER 27 THAT PURCHASES ANY OF THAT LAND FROM THE CITY MAY,
30 EITHER DIRECTLY OR IN EXCHANGE FOR CENTRAL ARIZONA PROJECT WATER ALLOCATED
31 FOR AGRICULTURAL PURPOSES, TRANSPORT GROUNDWATER FROM THE LAND TO THE
32 ADJACENT ACTIVE MANAGEMENT AREA ONLY FOR USE BY THE DISTRICT AND THE
33 DISTRICT MEMBERS. THE AMOUNT OF GROUNDWATER THAT MAY BE TRANSPORTED AWAY
34 FROM THE BASIN SHALL BE DETERMINED PURSUANT TO SUBSECTION B OF THIS
35 SECTION BUT SHALL NOT EXCEED:

36 1. IN ANY YEAR TWO TIMES THE ANNUAL TRANSPORTATION ALLOTMENT FOR
37 THE LAND DETERMINED PURSUANT TO SUBSECTION B OF THIS SECTION.

38 2. FOR ANY PERIOD OF TEN CONSECUTIVE YEARS COMPUTED IN CONTINUING
39 PROGRESSIVE SERIES BEGINNING IN THE YEAR TRANSPORTATION OF GROUNDWATER
40 FROM THE LAND BEGINS, TEN TIMES THE ANNUAL TRANSPORTATION ALLOTMENT FOR
41 THE LAND DETERMINED PURSUANT TO SUBSECTION B OF THIS SECTION.

42 3. SIX MILLION ACRE-FEET IN TOTAL.

43 B. THE DIRECTOR SHALL DETERMINE THE ANNUAL TRANSPORTATION ALLOTMENT
44 FOR LAND THAT IS OWNED BY A CITY OR A GROUNDWATER REPLENISHMENT DISTRICT
45 IN A GROUNDWATER BASIN THAT IS SUBJECT TO THIS SECTION AS FOLLOWS:

46 1. DETERMINE EACH FARM OR PORTION OF A FARM OWNED BY THE CITY OR
47 DISTRICT IN THE GROUNDWATER BASIN.

2. FOR EACH SUCH FARM OR PORTION OF A FARM OWNED BY THE CITY OR DISTRICT IN THE GROUNDWATER BASIN, DETERMINE THE HISTORICALLY IRRIGATED ACRES.

3. MULTIPLY THE SUM OF THOSE HISTORICALLY IRRIGATED ACRES FOR ALL SUCH FARMS OR PORTIONS OF FARMS BY THREE ACRE-FEET PER ACRE.

C. IN AN INITIAL ACTIVE MANAGEMENT AREA, FOR PURPOSES OF DETERMINING WHETHER TO ISSUE A CERTIFICATE OF ASSURED WATER SUPPLY OR TO DESIGNATE OR REDESIGNATE THE SERVICE AREA OF A CITY AS A SERVICE AREA WHERE AN ASSURED WATER SUPPLY EXISTS, PURSUANT TO SECTION 45-576, BASED IN WHOLE OR IN PART ON GROUNDWATER TRANSPORTED FROM THE GROUNDWATER BASIN UNDER THIS SECTION, THE DIRECTOR SHALL CONSIDER ONLY THE AMOUNT OF GROUNDWATER THAT CAN BE WITHDRAWN IN THE GROUNDWATER BASIN FROM A DEPTH TO ONE THOUSAND TWO HUNDRED FEET AT THE SITE OR SITES OF THE PROPOSED WITHDRAWALS AT A RATE THAT, WHEN ADDED TO THE EXISTING RATES OF WITHDRAWAL IN THE AREA, IS NOT EXPECTED TO CAUSE THE GROUNDWATER TABLE AT THE SITE OR SITES TO DECLINE MORE THAN AN AVERAGE OF TEN FEET PER YEAR DURING THE ONE HUNDRED YEAR EVALUATION PERIOD AND DOES NOT EXCEED FORTY PER CENT OF THE GROUNDWATER THAT CAN BE WITHDRAWN IN THE GROUNDWATER BASIN, LESS THE SUM OF THE FOLLOWING AMOUNTS OF GROUNDWATER IN THE GROUNDWATER BASIN:

1. THE TOTAL AMOUNT ON WHICH THE DIRECTOR HAS ALREADY BASED CERTIFICATES OR DESIGNATIONS OF ASSURED WATER SUPPLY IN AN INITIAL ACTIVE MANAGEMENT AREA.

2. THE TOTAL AMOUNT TRANSPORTED TO AN INITIAL ACTIVE MANAGEMENT AREA FOR OTHER PURPOSES.

D. FOR PURPOSES OF THIS SECTION:

1. LAND THAT IS PURCHASED OR OWNED BY A CITY INCLUDES LAND THAT IS PURCHASED OR OWNED DIRECTLY BY THE CITY AND LAND THAT IS PURCHASED OR OWNED INDIRECTLY BY THE CITY THROUGH A NONPROFIT CORPORATION OR OTHER ENTITY THAT IS OWNED OR CONTROLLED BY THE CITY.

2. LAND THAT IS PURCHASED OR OWNED BY A GROUNDWATER REPLENISHMENT DISTRICT INCLUDES LAND OR ANY INTEREST IN LAND THAT IS ACQUIRED, OWNED OR CONTROLLED DIRECTLY BY THE DISTRICT AND LAND OR ANY INTEREST IN LAND THAT IS ACQUIRED, OWNED OR CONTROLLED INDIRECTLY BY THE DISTRICT THROUGH A NONPROFIT CORPORATION OR OTHER ENTITY THAT IS OWNED OR CONTROLLED BY THE DISTRICT.

45-553. Transportation of groundwater withdrawn in Butler Valley groundwater basin to an initial active management area

A. GROUNDWATER MAY BE WITHDRAWN FROM LAND OWNED BY THIS STATE OR BY A POLITICAL SUBDIVISION OF THIS STATE IN THE BUTLER VALLEY GROUNDWATER BASIN FOR TRANSPORTATION TO AN INITIAL ACTIVE MANAGEMENT AREA.

B. TITLE TO LAND IN THE BUTLER VALLEY GROUNDWATER BASIN THAT IS OWNED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE AND FROM WHICH GROUNDWATER IS WITHDRAWN FOR TRANSPORTATION TO AN INITIAL ACTIVE MANAGEMENT AREA MAY BE SOLD, EXCHANGED OR OTHERWISE CONVEYED ONLY TO THIS STATE OR TO ANOTHER POLITICAL SUBDIVISION OF THIS STATE.

45-554. Transportation of groundwater withdrawn in
Harquahala irrigation non-expansion area to an
initial active management area

A. A GROUNDWATER REPLENISHMENT DISTRICT ESTABLISHED UNDER TITLE 48, CHAPTER 27 MAY LEASE FROM AN IRRIGATION DISTRICT LOCATED ENTIRELY WITHIN THE HARQUAHALA IRRIGATION NON-EXPANSION AREA THE USE OF ONE OR MORE OF THE WELLS IN THE IRRIGATION DISTRICT TO WITHDRAW THE GROUNDWATER THAT CAN BE WITHDRAWN FROM A DEPTH TO ONE THOUSAND FEET, AT A RATE THAT, WHEN ADDED TO THE EXISTING RATES OF WITHDRAWAL IN THE AREA, DOES NOT CAUSE THE GROUNDWATER TABLE AT THE SITE OR SITES TO DECLINE MORE THAN TEN FEET PER YEAR, FOR TRANSPORTATION TO AN INITIAL ACTIVE MANAGEMENT AREA. THE LEASE PAYMENTS SHALL BE MADE TO THE MEMBERS OF THE IRRIGATION DISTRICT ON A PRO RATA BASIS, PER ACRE OF LAND THAT IS ELIGIBLE TO BE IRRIGATED UNDER SECTION 45-437, SUBSECTION B, MINUS THE IRRIGATION DISTRICT'S ADMINISTRATIVE COSTS. WELLS LEASED UNDER THIS SUBSECTION ARE EXEMPT FROM WELL SPACING REQUIREMENTS UNDER SECTION 45-605.

B. A POLITICAL SUBDIVISION THAT OWNS LAND ELIGIBLE TO BE IRRIGATED UNDER SECTION 45-437, SUBSECTION B IN THE HARQUAHALA IRRIGATION NON-EXPANSION AREA MAY WITHDRAW GROUNDWATER FROM THE LAND FOR TRANSPORTATION TO AN INITIAL ACTIVE MANAGEMENT AREA ONLY:

1. IF THE GROUNDWATER IS WITHDRAWN:

(a) FROM A DEPTH TO ONE THOUSAND FEET AT THE SITE OR SITES OF THE PROPOSED WITHDRAWALS.

(b) AT A RATE THAT, WHEN ADDED TO THE EXISTING RATE OF WITHDRAWALS IN THE AREA, DOES NOT CAUSE THE GROUNDWATER TABLE AT THE SITE OR SITES OF THE WITHDRAWALS TO DECLINE MORE THAN AN AVERAGE OF TEN FEET PER YEAR DURING THE ONE HUNDRED YEAR EVALUATION PERIOD.

2. IN AN AMOUNT EITHER:

(a) PER ACRE OF THE ELIGIBLE LAND, NOT TO EXCEED:

(i) SIX ACRE-FEET IN ANY YEAR.

(ii) THIRTY ACRE-FEET FOR ANY PERIOD OF TEN CONSECUTIVE YEARS COMPUTED IN CONTINUING PROGRESSIVE SERIES BEGINNING IN THE YEAR TRANSPORTATION OF GROUNDWATER FROM THE LAND BEGINS.

(b) ESTABLISHED BY THE DIRECTOR, BUT ONLY IF THE DIRECTOR DETERMINES THAT WITHDRAWALS IN AN AMOUNT GREATER THAN THAT PERMITTED BY SUBDIVISION (a) OF THIS PARAGRAPH WILL NOT UNREASONABLY INCREASE DAMAGE TO RESIDENTS OF SURROUNDING LAND AND OTHER WATER USERS IN THE IRRIGATION NON-EXPANSION AREA, OR THAT ONE OR MORE OF THE ENTITIES WITHDRAWING THE GROUNDWATER WILL MITIGATE THE DAMAGE TO THE RESIDENTS AND OTHER WATER USERS.

C. IF THIS STATE OR ONE OR MORE POLITICAL SUBDIVISIONS OF THIS STATE OWN EIGHTY PER CENT OR MORE OF THE LAND THAT IS ELIGIBLE TO BE IRRIGATED UNDER SECTION 45-437, SUBSECTION B IN THE IRRIGATION NON-EXPANSION AREA, EACH OF THE ENTITIES MAY WITHDRAW GROUNDWATER FROM THE ELIGIBLE LAND IT OWNS FOR TRANSPORTATION TO AN INITIAL ACTIVE MANAGEMENT AREA:

1. FROM A DEPTH TO ONE THOUSAND FEET AT THE SITE OR SITES OF WITHDRAWALS.

2. FROM A DEPTH BETWEEN ONE THOUSAND AND ONE THOUSAND TWO HUNDRED FEET AT THE SITE OR SITES OF THE WITHDRAWALS ONLY IF THE DIRECTOR DETERMINES EITHER THAT THE WITHDRAWALS WILL NOT UNREASONABLY INCREASE DAMAGE TO RESIDENTS OF SURROUNDING LAND OR THAT ONE OR MORE OF THE ENTITIES WITHDRAWING THE GROUNDWATER WILL MITIGATE THE DAMAGE TO THE RESIDENTS.

45-555. Transportation of groundwater withdrawn in Big Chino sub-basin of the Verde River groundwater basin to initial active management area; definitions

A. A CITY OR TOWN THAT OWNS LAND CONSISTING OF HISTORICALLY IRRIGATED ACRES IN THE BIG CHINO SUB-BASIN OF THE VERDE RIVER GROUNDWATER BASIN, AS DESIGNATED BY ORDER OF THE DIRECTOR DATED JUNE 21, 1984, OR A CITY OR TOWN WITH THE CONSENT OF THE LANDOWNER, MAY WITHDRAW FROM THE LAND FOR TRANSPORTATION TO AN ADJACENT INITIAL ACTIVE MANAGEMENT AREA AN AMOUNT OF GROUNDWATER DETERMINED PURSUANT TO THIS SECTION. THE AMOUNT OF GROUNDWATER THAT MAY BE WITHDRAWN FROM THE LAND PURSUANT TO THIS SECTION SHALL NOT EXCEED:

1. IN ANY YEAR TWO TIMES THE ANNUAL TRANSPORTATION ALLOTMENT FOR THE LAND DETERMINED PURSUANT TO SUBSECTION B OF THIS SECTION.

2. FOR ANY PERIOD OF TEN CONSECUTIVE YEARS COMPUTED IN CONTINUING PROGRESSIVE SERIES BEGINNING IN THE YEAR TRANSPORTATION OF GROUNDWATER FROM THE LAND BEGINS, TEN TIMES THE ANNUAL TRANSPORTATION ALLOTMENT FOR THE LAND.

B. THE DIRECTOR SHALL DETERMINE THE ANNUAL TRANSPORTATION ALLOTMENT AS FOLLOWS:

1. DETERMINE EACH FARM OR PORTION OF A FARM OWNED OR LEASED BY THE CITY OR TOWN IN THE SUB-BASIN.

2. FOR EACH SUCH FARM OR PORTION OF A FARM, DETERMINE THE HISTORICALLY IRRIGATED ACRES RETIRED FROM IRRIGATION. MULTIPLY THE SUM OF THOSE HISTORICALLY IRRIGATED ACRES BY THREE ACRE-FEET PER ACRE.

C. IN MAKING THE DETERMINATION REQUIRED BY SUBSECTION B OF THIS SECTION, THE DIRECTOR SHALL RELY ONLY ON CREDIBLE DOCUMENTARY EVIDENCE SUBMITTED BY THE CITY OR TOWN OR OTHERWISE OBTAINED BY THE DEPARTMENT.

D. FOR PURPOSES OF THIS SECTION:

1. "DOCUMENTARY EVIDENCE" MEANS CORRESPONDENCE, CONTRACTS, OTHER AGREEMENTS, AERIAL PHOTOGRAPHY, AFFIDAVITS, RECEIPTS OR OFFICIAL RECORDS.

2. "FARM" MEANS AN AREA OF LAND IN THE SUB-BASIN THAT IS OR WAS SERVED BY A COMMON IRRIGATION WATER DISTRIBUTION SYSTEM.

3. "HISTORICALLY IRRIGATED ACRES" MEANS ACRES OF LAND OVERLYING AN AQUIFER THAT WERE IRRIGATED WITH GROUNDWATER AT ANY TIME BETWEEN JANUARY 1, 1975 AND JANUARY 1, 1990.

E. THIS ARTICLE DOES NOT APPLY TO THE WITHDRAWAL AND TRANSPORTATION OF UP TO FOURTEEN THOUSAND ACRE-FEET PER YEAR OF GROUNDWATER BY THE CITY OF PRESCOTT, OR THE UNITED STATES IN COOPERATION WITH THE CITY OF PRESCOTT, FROM THE BIG CHINO SUB-BASIN OF THE VERDE RIVER GROUNDWATER BASIN IF THE GROUNDWATER IS WITHDRAWN AND TRANSPORTED EITHER:

1. IN EXCHANGE FOR OR REPLACEMENT OR SUBSTITUTION OF SUPPLIES OF WATER FROM THE CENTRAL ARIZONA PROJECT ALLOCATED TO INDIAN TRIBES, CITIES, TOWNS OR PRIVATE WATER COMPANIES IN THE PRESCOTT ACTIVE MANAGEMENT AREA OR IN THE VERDE RIVER GROUNDWATER BASIN.

2. FOR THE PURPOSE OF DIRECTLY OR INDIRECTLY FACILITATING THE SETTLEMENT OF THE WATER RIGHTS CLAIMS OF THE YAVAPAI-PRESCOTT INDIAN TRIBE AND THE CAMP VERDE YAVAPAI-APACHE INDIAN COMMUNITY.

45-556. Transportation fee; annual adjustment; credits; enforcement

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A PERSON WHO DIRECTLY OR INDIRECTLY TRANSPORTS GROUNDWATER, WITHDRAWN IN A GROUNDWATER BASIN OR SUB-BASIN AS PROVIDED BY THIS ARTICLE OR IN THE PINAL ACTIVE MANAGEMENT AREA, AWAY FROM THE COUNTY IN WHICH IT WAS WITHDRAWN TO AN INITIAL ACTIVE MANAGEMENT AREA SHALL PAY ANNUALLY TO THE COUNTY A GROUNDWATER TRANSPORTATION FEE DETERMINED BY THE DIRECTOR FOR EACH ACRE-FOOT OF GROUNDWATER TRANSPORTED DIRECTLY OR INDIRECTLY AWAY FROM THE COUNTY, LESS ANY AMOUNT OF CENTRAL ARIZONA PROJECT WATER ACTUALLY USED ON THE PROPERTY FROM WHICH THE GROUNDWATER IS TRANSPORTED.

B. A PERSON IS NOT REQUIRED TO PAY A TRANSPORTATION FEE UNDER THIS SECTION FOR WATER WITHDRAWN PURSUANT TO AN UNDERGROUND STORAGE AND RECOVERY PROJECT PERMIT OR AN INDIRECT GROUNDWATER STORAGE AND RECOVERY PROJECT PERMIT ISSUED BY THE DIRECTOR PURSUANT TO CHAPTER 3, ARTICLE 1 OR 3 OF THIS TITLE.

C. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION THE DIRECTOR SHALL SET THE FEE AS FOLLOWS FOR THE CUMULATIVE AMOUNT OF GROUNDWATER TRANSPORTED AWAY FROM THE COUNTY, LESS ANY AMOUNT OF CENTRAL ARIZONA PROJECT WATER ACTUALLY USED ON THE PROPERTY FROM WHICH THE GROUNDWATER IS TRANSPORTED:

<u>NET GROUNDWATER TRANSPORTED</u>	<u>FEE PER ACRE-FOOT</u>
0 - 1,000,000 ACRE-FEET	\$ 3.00
1,000,001 - 2,000,000 ACRE-FEET	\$ 5.00
2,000,001 - 3,000,000 ACRE-FEET	\$ 7.50
3,000,001 - 4,000,000 ACRE-FEET	\$10.00
4,000,001 - 5,000,000 ACRE-FEET	\$15.00
OVER 5,000,000 ACRE-FEET	\$30.00

D. THE DIRECTOR SHALL ANNUALLY ADJUST THE DOLLAR AMOUNT OF THE FEE ACCORDING TO THE ANNUAL CHANGES IN THE GNP PRICE DEFLATOR, AS DEFINED IN SECTION 41-563, USING THE 1993 CALENDAR YEAR AS THE BASE YEAR. THE DIRECTOR SHALL IMMEDIATELY NOTIFY ALL CONCERNED PARTIES OF THE FEE ADJUSTMENTS UNDER THIS SUBSECTION.

E. CREDITS ARE ALLOWED AGAINST THE FEES IMPOSED BY THIS SECTION AS DESCRIBED AND IN THE AMOUNTS PROVIDED UNDER THIS SUBSECTION. IF THE AMOUNT OF THE CREDIT EXCEEDS THE AMOUNT OF THE FEE IMPOSED FOR ANY YEAR, THE UNUSED PORTION OF THE CREDIT MAY BE CARRIED FORWARD AND APPLIED TO SUBSEQUENT YEARS' FEES UNTIL THE AMOUNT OF THE CREDIT IS EXHAUSTED. THE ALLOWABLE CREDITS ARE AS FOLLOWS:

1. THE AMOUNT OF ANY INCREASE IN PROPERTY TAX REVENUES, INCLUDING CONTRIBUTIONS IN LIEU OF PROPERTY TAXES UNDER TITLE 9, CHAPTER 4, ARTICLE

3, DERIVED FROM REMOTE MUNICIPAL PROPERTY, AS DEFINED IN SECTION 42-257, FROM WHICH THE GROUNDWATER IS WITHDRAWN. THE CREDIT SHALL ACCOUNT FOR INCREASED REVENUES DUE TO IMPROVEMENTS TO THE PROPERTY AND INCREASED REVENUES DUE TO HIGHER PROPERTY TAX VALUATIONS AND ASSESSMENT RATIOS RESULTING FROM CHANGES IN USE OF THE PROPERTY. THE CREDIT SHALL NOT ACCOUNT FOR INCREASED REVENUES DUE TO NORMAL MARKET OR ECONOMIC FACTORS. THE AMOUNT OF THE CREDIT FOR ANY YEAR IS THE SUM OF THE AMOUNTS COMPUTED UNDER SUBDIVISIONS (a) AND (b) AS FOLLOWS:

(a) DELETE FROM CONSIDERATION UNDER THIS SUBDIVISION ANY PROPERTY WITH RESPECT TO WHICH AN AMOUNT IS COMPUTED UNDER SUBDIVISION (b). SUBTRACT THE AMOUNT OF PROPERTY TAX OR IN LIEU REVENUES THAT WOULD HAVE BEEN DERIVED FROM THE REMAINING PROPERTY DURING THE IMMEDIATELY PRECEDING TAX YEAR IF THE USE OF AND IMPROVEMENTS TO THE PROPERTY HAD REMAINED UNCHANGED SINCE THE DATE THE CITY OR TOWN ACQUIRED THE PROPERTY FROM THE AMOUNT OF PROPERTY TAX OR IN LIEU REVENUES ACTUALLY DERIVED FROM THAT PROPERTY DURING THE IMMEDIATELY PRECEDING TAX YEAR. IF A CITY OR TOWN CONVEYS ALL OR PART OF ITS INTEREST IN REMOTE MUNICIPAL PROPERTY TO ANOTHER POLITICAL SUBDIVISION, THE POLITICAL SUBDIVISION SUCCEEDS TO THE CREDIT ALLOWED UNDER THIS SECTION. THE AMOUNT OF CREDIT COMPUTED UNDER THIS SUBDIVISION SHALL BE COMPUTED EACH YEAR, BEGINNING IN THE YEAR GROUNDWATER IS FIRST TRANSPORTED, AND, IF NOT USED TO OFFSET THE FEE UNDER THIS SECTION, SHALL BE CUMULATED FROM YEAR TO YEAR.

(b) THIS SUBDIVISION APPLIES WITH RESPECT TO ANY PORTION OF THE REMOTE MUNICIPAL PROPERTY THAT, BEFORE JANUARY 1, 1992, WAS CLASSIFIED AS CLASS FOUR PROPERTY PURSUANT TO SECTION 42-162 BUT WAS DEVELOPED OR IMPROVED AT ANY TIME AFTER DECEMBER 31, 1991 AND IS NO LONGER CLASSIFIED AS CLASS FOUR PROPERTY. SUBTRACT THE AMOUNT OF PROPERTY TAX OR IN LIEU REVENUES THAT WOULD HAVE BEEN DERIVED FROM THAT DEVELOPED OR IMPROVED PORTION OF THE REMOTE MUNICIPAL PROPERTY DURING THE IMMEDIATELY PRECEDING TAX YEAR IF THE USE OF AND IMPROVEMENTS TO THE PROPERTY HAD REMAINED UNCHANGED SINCE THE DATE THE CITY OR TOWN ACQUIRED THE PROPERTY FROM THE AMOUNT OF PROPERTY TAX OR IN LIEU REVENUES ACTUALLY DERIVED FROM THAT PORTION OF THE PROPERTY DURING THE IMMEDIATELY PRECEDING TAX YEAR. IF A CITY OR TOWN CONVEYS ALL OR PART OF ITS INTEREST IN REMOTE MUNICIPAL PROPERTY TO ANOTHER POLITICAL SUBDIVISION, THE POLITICAL SUBDIVISION SUCCEEDS TO THE CREDIT ALLOWED UNDER THIS SECTION. THE AMOUNT OF CREDIT COMPUTED UNDER THIS SUBDIVISION SHALL BE COMPUTED EACH YEAR, BEGINNING IN THE YEAR THAT THE PROPERTY IS DEVELOPED OR IMPROVED AND RECLASSIFIED FOR TAX PURPOSES, AND, IF NOT USED TO OFFSET THE FEE UNDER THIS SECTION, SHALL BE CUMULATED FROM YEAR TO YEAR.

2. AN AMOUNT EQUAL TO THE MARKET VALUE OF LAND DONATED TO THE COUNTY IF THE COUNTY AGREES IN WRITING TO PROHIBIT OR LIMIT THE WITHDRAWAL OF GROUNDWATER FROM THE LAND. THE AMOUNT OF THE CREDIT SHALL ACCOUNT FOR THE REDUCED VALUE OF THE LAND DUE TO THE GROUNDWATER WITHDRAWAL LIMITATIONS.

3. AN AMOUNT AGREED TO BY INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY IN WHICH THE GROUNDWATER IS WITHDRAWN AND THE CITY, TOWN OR OTHER PERSON TRANSPORTING THE GROUNDWATER.

F. THE BOARD OF SUPERVISORS OF A COUNTY TO WHICH FEES ARE DUE AND PAYABLE UNDER THIS SECTION MAY REQUEST THE COUNTY ATTORNEY TO COMMENCE AND PROSECUTE ANY ACTION OR PROCEEDING TO ENFORCE THE COLLECTION OF THE FEES.

45-557. Requirements for transporting groundwater to an initial active management area; exception

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION:

1. THE DIRECTOR SHALL NOT CONSIDER GROUNDWATER THAT IS BEING OR WILL BE WITHDRAWN IN A GROUNDWATER BASIN OR SUB-BASIN PURSUANT TO THIS ARTICLE OR THE PINAL ACTIVE MANAGEMENT AREA AND TRANSPORTED TO AN INITIAL ACTIVE MANAGEMENT AREA FOR PURPOSES OF DETERMINING OR PROVIDING AN ASSURED WATER SUPPLY PURSUANT TO SECTION 45-576 IF THE GROUNDWATER IS BEING OR WILL BE USED BY A CITY, TOWN OR PRIVATE WATER COMPANY THAT WAS OFFERED BUT DID NOT SIGN A CENTRAL ARIZONA PROJECT WATER DELIVERY SUBCONTRACT.

2. A CITY, TOWN OR PRIVATE WATER COMPANY THAT HAS SIGNED A CENTRAL ARIZONA PROJECT WATER DELIVERY SUBCONTRACT MAY NOT USE GROUNDWATER WITHDRAWN IN A GROUNDWATER BASIN OR SUB-BASIN PURSUANT TO THIS ARTICLE OR THE PINAL ACTIVE MANAGEMENT AREA AND TRANSPORTED TO AN INITIAL ACTIVE MANAGEMENT AREA UNTIL IT HAS BOTH:

(a) DEMONSTRATED THAT IT HAS THE PHYSICAL CAPACITY, INCLUDING THE WATER TREATMENT PLANT AND DELIVERY SYSTEM, TO ACCEPT DELIVERY OF NINETY-FIVE PER CENT OF ITS CENTRAL ARIZONA PROJECT WATER ENTITLEMENT UNDER ITS CENTRAL ARIZONA PROJECT WATER DELIVERY SUBCONTRACT.

(b) ACCEPTED DELIVERY OF OR EXCHANGED EIGHTY PER CENT OR MORE OF THE CENTRAL ARIZONA PROJECT WATER AVAILABLE TO IT UNDER ITS CENTRAL ARIZONA PROJECT WATER DELIVERY SUBCONTRACT IN AT LEAST ONE OF THE THREE YEARS IMMEDIATELY PRECEDING THE YEAR IT INTENDS TO BEGIN USING GROUNDWATER TRANSPORTED AWAY FROM A GROUNDWATER BASIN OR SUB-BASIN PURSUANT TO THIS ARTICLE OR THE PINAL ACTIVE MANAGEMENT AREA.

B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO GROUNDWATER WITHDRAWN IN THE BIG CHINO SUB-BASIN OF THE VERDE RIVER GROUNDWATER BASIN AND TRANSPORTED TO AN ADJOINING INITIAL ACTIVE MANAGEMENT AREA PURSUANT TO SECTION 45-554.

45-558. Weeds and dust

A PERSON SHALL MAINTAIN PROPERTY OWNED BY THE PERSON AND FROM WHICH GROUNDWATER IS OR WILL BE TRANSPORTED PURSUANT TO THIS ARTICLE FREE OF NOXIOUS WEEDS AS DEFINED IN SECTION 3-201, RUSSIAN THISTLES (SALSOLA KALI) AND BLOWING DUST THAT CREATES A THREAT TO HEALTH OR SAFETY.

Sec. 29. Section 45-604, Arizona Revised Statutes, is amended to read:

45-604. Water measuring devices

A. Except as provided in subsections B and C OF THIS SECTION, a person who withdraws groundwater from a nonexempt well in an active management area or an irrigation non-expansion area, OR WHO WITHDRAWS GROUNDWATER FOR TRANSPORTATION TO AN INITIAL ACTIVE MANAGEMENT AREA PURSUANT TO ARTICLE 8.1 OF THIS CHAPTER, shall use a water measuring device approved by the director.

B. A person who holds a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit in the amount of ten or fewer acre-feet